

# A Renaissance of the Peace Process? What kind of society do we need?

*Report on a conference held in the Canada Room, Queen's University Belfast, on 27 September 2019*



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# INTRODUCTION

*A Renaissance of the Peace Process? What kind of society do we need?* was a one day working conference held from 9.30am to 4.45pm on Friday 27 September 2019 in the Canada Room, Queen's University Belfast. The conference was organised by the Committee on the Administration of Justice (CAJ) in collaboration with the Irish Council for Civil Liberties (ICCL), QUB Human Rights Centre, and Senator George J. Mitchell Institute for Global Peace, Security and Justice.



At the time this conference was held, it seemed to many of us as if we might be heading into a time of political turbulence and perhaps confrontation. We were right, though perhaps didn't understand the true magnitude of what was coming next.

Since then, we have had a Withdrawal Agreement concluded between the UK and EU, containing a Protocol that means Northern Ireland will maintain significant regulatory alignment with the EU. We've also had a UK general election, resulting in an apparently invincible Conservative majority; the return of devolved institutions, which collapsed again before elections in May 2022; and the onslaught of a pandemic, which halted ordinary life in its tracks across the globe. There is also an increasing debate on the future constitutional arrangements for Northern Ireland, especially the demand for a future referendum on a United Ireland.

The reality is that the 'particular circumstances' of Northern Ireland have become more unique, more challenging, and more demanding of a human rights approach.

There are some clearly negative developments regarding human rights. Northern Ireland will be impacted in very particular ways by the Conservative government's proposals to change the judicial review process, amend the Human Rights Act in a number of possible ways and abandon the Stormont House Agreement as an approach to dealing with the legacy of the past. The government's proposals for a total amnesty and an end to any recourse to law for Troubles-related "incidents" is a massive blow to the rule of law and, for victims, it will become a greater source of anguish and disaffection as we move forward.

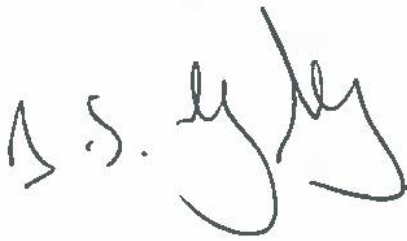
The New Decade, New Approach (NDNA) deal made in January 2020 to restore devolution to Northern Ireland was positive in many respects. Devolved institutions were re-established on the basis of an agreement that included detailed commitments by the parties on priorities that would further social, economic and cultural rights. While there was some progress on particular issues, the business of the Assembly and Executive was disrupted by the unprincipled use of the various vetoes available to unscrupulous political parties. Even the report of the Ad Hoc Committee on a Bill of Rights was gutted by the opposition of the DUP to any increase in human rights for our people.

The pandemic has shown how easily rights can be violated in times of crisis. Emergency regulations were badly handled, the right to protest – especially for Black Lives Matter – was threatened by poor policing and government mismanagement breached the right to health care of many thousands of people.

Our response to all of this must be a 'renaissance of the peace process'. We need to focus on all the issues raised at the conference in September 2019 and within this report. We must work for the promise found within the Good Friday Agreement of Northern Ireland as a rights-based society.

We need to populate that concept with specific elements, which relate to our particular circumstances. These elements should include a revamped Bill of Rights, with a new emphasis on social, economic and cultural rights; an all-island approach to rights and equality, based on practical necessity, not constitutional preference; and the development of social and economic campaigning built upon human rights entitlements. Finally, the experience of the current pandemic should be used as a way to reemphasise the need for us to take a rights-based response to climate change, another global threat to humanity.

A programme based on the elements outlined above would amount to a true renaissance of the peace process. It would help us achieve the end result of a society based on human rights, which has been too long delayed.

A handwritten signature in black ink, appearing to read 'B. S. Gormally'.

**Brian Gormally**  
**Director, Committee on the Administration of Justice**  
**April 2022**

# CONFERENCE AGENDA

- 9.30am**     **Welcome and opening comments** - Professor Kieran McEvoy (QUB)
- 9.45am**     **Panel 1: Implementing the peace agreements**  
Chaired by Susan McKay (Journalist & Broadcaster)  
The Bill of Rights and all-island Charter of Rights - Anne Smith (Ulster University)  
Manifesto for a Rights Based Return to Power Sharing - Patricia McKeown  
(Equality Coalition & UNISON)  
Policing and dealing with the past - Paul O'Connor (Pat Finucane Centre)
- 11.15am**     **Break**
- 11.30am**     **Panel 2: A rights based society after Brexit**  
Chaired by Eilis Barry (FLAC)  
Immigration, citizenship and the CTA - Úna Boyd (CAJ)  
Rights on the island - Siobhán Mullally (NUI Galway)  
Developing a broad-based, inclusive equality campaign - Louise Coyle (NIRWN)
- 1pm**         **Lunch**
- 1.45pm**     **Panel 3: Rights and constitutional change**  
Chaired by Dawn Purvis (Activist)  
The GFA and rights guarantees during constitutional change - Colin Harvey  
(QUB)  
Change in the South - Doireann Ansbro (ICCL)  
Guarantees for unionists in a United Ireland - Senator Ian Marshall
- 3.15pm**     **Break**
- 3.30pm**     **A view from the USA** - Patrick Doherty (Office of the New York State  
Comptroller)
- 3.50pm**     **Closing session: The way forward**  
Chaired by Brian Gormally (CAJ)
- 4.45pm**     **Close**

*Titles and affiliations listed for identification purposes only. They were correct at the time the event took place. The views expressed during the conference were the speakers' own.*

# WELCOME AND OPENING COMMENTS

Dr Kieran McEvoy, Professor Of Law And Transitional Justice, Queen's University Belfast

**Kieran McEvoy** is a Professor of Law and Transitional Justice who works within the Senator George J. Mitchell Institute for Global Peace, Security and Justice, and School of Law at Queen's University Belfast. Kieran has conducted research in over a dozen conflicted or transitional countries, written or edited six books, and authored more than 60 journal articles. His research has garnered a number of awards, including the British Society of Criminology book of the year award. Kieran is a long term human rights and peace activist in Northern Ireland and a current member of CAJ's Executive Committee.



This event arises from a shared concern in the current political context about a need to refocus on the centrality of human rights and the peace process. Those of us who have been involved in human rights for a while do not try to oversell the product in terms of human rights. Human rights doesn't magically resolve political issues or political disputes, but what it does is provide a framework within which to have civilised conversation about sometimes competing rights. I think a number of us are very concerned at the moment about the direction politics is going, and the tenor and the tone of the political debate.

Watching the UK Parliament the other day, I was horrified by some of the language that was being used by political actors – it's very worrying. I watched the Supreme Court judgment [on the prorogation of parliament] as I'm sure many of you did. Then I was watching the news that night and the Prime Minister, Boris Johnson, was doing a joint gig with Donald Trump. My six year old was sitting beside me, watching the news too, and he asked me, "Dad, are they twins?". I thought, "From the mouths of babes!", and I said, "Well, yes son, they do have a lot in common. They were both born in New York, neither of them like it when judges or lawyers tell them what to do, they both like stirring people up, and one of them has a very bad set of goggle tan lines". I don't know if you've noticed that with Trump, he's got goggle tan lines and obviously had a spray paint job done, but apart from that they're very similar.

There is a vulgarisation happening to political discourse at the moment – at times you think that people are road testing what they think they can get away with in terms of politics and language. So, I think it's a useful time for those of us with an interest in human rights to refocus and to highlight that human rights have been at the centre of the peace process in Northern Ireland.

Brian Gormally, the Director of the Committee on the Administration of Justice (CAJ), came up with the idea that we need to have a 'renaissance' of the peace process - a rebirth, going back to the fundamentals of human rights principles and the role they can play. We're not just talking about human rights in Northern Ireland – we're talking about human rights across these islands. We're talking about human rights in the Republic of Ireland as well. As everybody is aware, Brexit has brought an energy and a focus to conversations around a United Ireland. In that context, obviously, people from a unionist background are, in particular, very exercised and concerned about their human rights. So [what we are discussing today] has relevance across these islands and particularly here, North and South.

There are three main themes today, as you'll see on your programme: we're looking at the implementation of the peace agreements and the Bill of Rights debate; we're looking at rights after Brexit - around immigration, citizenship, and so forth; and, finally, we're looking at rights and constitutional change.



## PANEL I: IMPLEMENTING THE PEACE AGREEMENTS



### **CHAIR:**

Susan McKay, Journalist (right)

### **PANELLISTS:**

Anne Smith, Ulster University (left); Patricia McKeown, UNISON (centre-left); Paul O'Connor, Pat Finucane Centre (centre-right)



# THE BILL OF RIGHTS AND ALL-ISLAND CHARTER OF RIGHTS

Anne Smith, Senior Lecturer, Ulster University

**Dr Anne Smith** is a Senior Lecturer at the Transitional Justice Institute and the School of Law at Ulster University, teaching at both undergraduate and postgraduate level. Her research and teaching interests are transitional constitutionalism, comparative constitutional law, human rights, and equality. She has published widely in these areas and is a peer reviewer for several journals, including the *Interdisciplinary Journal of Human Rights Law* and the *Journal of Human Rights*. She is involved in various research networks and is a Senior Fellow of the Higher Education Academy (HEA), a professional membership body that promotes excellence in higher education.



This conference is taking place at a critical time in the debate over Brexit. Given the equality and human rights crisis that Brexit will pose, now more than ever there is a need to address what Michael Farrell described as the “unfinished business” of the Good Friday/Belfast Agreement (GFA) in the human rights area. Namely, the Bill of Rights and the all-island Charter of Rights. Furthermore, the Northern Ireland Human Rights Commission (NIHRC) have noted in their annual statement for 2018 [published in December 2018] that there are now more potential and ongoing violations of human rights occurring in NI than there were in 2012, when their first annual statement was published. The Special Rapporteur on extreme poverty and human rights, Philip Alston, also reported [in 2018] that, when Brexit occurs, the poor will be substantially less well off than they already are. He also referred to the [then] suspension of devolved government in Northern Ireland and stated that is preventing the possibility of efforts to tackle poverty, resulting in an accountability vacuum.

At the outset, it is important to state that my focus will be on the Bill of Rights primarily because the project that I worked on with Professor Colin Harvey focused on this. Before talking about our project, it is important to highlight that there is a need to change the Bill of Rights narrative. A Bill of Rights is not about protecting rights for some, it is about providing the necessary protection for all in society. In the context of both Brexit and changing demographics in Northern Ireland, unionism may come to view a Bill of Rights as an instrument of protection in the face of future constitutional change.

The aim of my research project with Professor Harvey, which was funded by Joseph Rowntree Charitable Trust (JRCT), was to start the discussion and get the Bill of Rights process going again. We did this by publishing a draft model bill, based on NIHRC’s 2008 Bill of Rights advice [available here: [www.nihrc.org/publication/category/Bill-of-Rights](http://www.nihrc.org/publication/category/Bill-of-Rights)]. We then used this as a basis from which to engage with a range of people who have been, and continue to be, involved in the Bill of Rights process, such as members of civil and political society, and statutory human rights and equality organisations.

NIHRC’s advice includes recommendations that advance new substantive rights, in addition to proposals relating to enforcement and implementation. The recommendations comprise a range of rights; embracing economic, social and cultural rights, as well as civil and political rights. Much of NIHRC’s advice remains persuasive, and the extent to which a full range of rights was included is impressive. However, the advice was also the subject of disagreement both within and outside NIHRC. Nonetheless, rather than starting off with a blank piece of paper, we concluded that the advice was a strong basis on which to proceed. The publication of a draft legislative model bill produced several responses. First, the draft model bill was

welcomed by participants in the project as a meaningful contribution. Second, most participants felt that the draft model bill did not go far enough regarding certain rights/areas. Participants highlighted the need for:

- **Stronger provisions on children's rights:** to include the raising the minimum age of criminal responsibility to 12 to meet international standards (it is 10 at present); and express provision outlining the child's right to have access to appropriate spaces and leisure facilities.
- **A stronger equality provision,** with particular emphasis on disability and the need to protect younger people;
- **The inclusion of refugee rights:** including the rights of refugees and unaccompanied children.
- **More on women's rights:** especially reproductive rights – it was felt that lack of abortion services and the fact that abortion is not viewed as a human rights issue represents gender inequality.
- **The inclusion of marriage equality** for same sex couples.

Campaigns on the last two major social issues (marriage equality and reproductive rights) had notable successes (via the Westminster Parliament) in 2019. However, that does not mean we do not need a Bill of Rights. A Bill of Rights supplements and complements existing legislation and provides an overarching framework. Furthermore, a basic purpose of the Bill of Rights is to safeguard the GFA. Brexit poses a serious threat to the GFA, and this was also highlighted in the responses from participants. The dangers can be summarised as follows:

- **Citizenship equality and EU citizenship rights:** Brexit will create two classes of citizenship (British and Irish citizenship). Those persons holding only British citizenship will no longer be able to exercise EU-treaty rights, including freedom of movement within the EU and the right to enter, work, study and reside in any EU member state, with the associated right to be free of discrimination on the grounds of nationality. Irish citizens will continue to be EU citizens, with the right to move freely within the EU without discrimination, while British citizens will not. To force people to choose one or other citizenship in order to access different rights is against the spirit of the GFA.
- **Equivalence of rights on the island of Ireland:** This requires the same level of protection of rights both North and South, and has its roots in the GFA.
- **EU equality protections:** Brexit will result in the loss of EU protections. Significant elements of equality standards in the UK derive from EU law and regulation, such as the Race Equality Directive and the Employment Equality Directive.

NIHRC's Bill of Rights advice contains a general right to equality and a broad-ranging prohibition of discrimination. However, this would not compensate for the loss of EU protections.

### **SO HOW COULD A BILL OF RIGHTS LEGISLATE FOR EQUALITY OF CITIZENSHIP, FOR THE LOSS OF EU EQUALITY RIGHTS, AND FOR THE EQUIVALENCE OF RIGHTS?**

The following recommendations were put forward by participants as to how NIHRC's original 2008 Bill of Rights advice could be augmented to effectively cover these emerging issues:

#### **Equality of citizenship**

The wording around citizenship could be supplemented as follows (new insertions to the NIHRC advice shown in ***bold italics***):

[A provision] should be drafted to ensure that the right of the people of Northern Ireland to hold British or Irish citizenship or both in accordance with the laws governing the exercise of this right, with no detriment or differential treatment of any kind. ***It should be the duty of the UK***

***Government, through legislation and agreement as possible, to ensure full and effective equality of the rights accruing to the two forms of citizenship.*** This right would not be affected by any future change in the status of Northern Ireland.

***A provision should be drafted to ensure that all EU citizens have the right to enter and leave Northern Ireland without let or hindrance; the right to reside indefinitely and work in Northern Ireland; and are able to access any other rights currently enjoyed by EU citizens under EU Treaties on the territory of the UK as may be practically possible.***

### **Freedom of movement**

The advice could be updated with the following new recommendation:

***A provision should be drafted that prohibits controls on local journeys between Ireland and Northern Ireland.***

This would address the issue of freedom of movement – the right to travel and work elsewhere in the EU, which includes equal pay for equal work.

### **Equivalence of rights on the island of Ireland**

The advice could be amended to also include the following clause:

***Without any regression, the level of protection of human rights in Northern Ireland shall be at least equivalent to that which pertains in Ireland. It shall be the duty of the UK Government to amend this Bill or bring forward appropriate legislation to ensure this as and when necessary.***

### **EU equality protections**

To provide additional protections, the following clause could be added to NIHRC's advice:

***EU laws, regulations and directives that NIHRC certify as having significant impact on equality and human rights protections shall continue in force in Northern Ireland in perpetuity unless and until they are replaced by equivalent or greater protections. Northern Ireland courts may take into account the jurisprudence of the European Court of Justice in interpreting such EU law.***

Several participants also referred to another important source of rights protection under threat, namely the European Convention on Human Rights (ECHR) and the Human Rights Act 1998 (HRA). The British government has committed to repeal the HRA and replace it with a British Bill of Rights; it has even referred to possible withdrawal from the ECHR (something that may well become more straightforward after Brexit). While such a threat has been delayed due to Brexit, it appears to be only temporary, and raises the spectre of a further lowering of the threshold of rights protection and further undermining the GFA.

## **THE WAY FORWARD**

What should be the next steps for the Northern Ireland Bill of Rights? In response to this question some participants proposed a Private Member's Bill at Westminster. In our discussions with members of the Human Rights Consortium, the general consensus was that a Private Member's Bill would not be an appropriate solution because a Bill of Rights would provide an overarching framework. Unlike abortion and equal marriage, which are single issues, a Bill of Rights is too massive for such a Bill. However, we do agree that the focus needs to be at Westminster. In that context we are meeting Lady Hermon on the 4 October 2019 and we (alongside members of the Human Rights Consortium) hope to meet with other politicians in Westminster. We are in an unfortunate position, but we are where we are and we are fortunate that we

have a “well-informed and truculent civil society” [a phrase coined by Christopher McCrudden in 2007], who have worked tirelessly to advance the Bill of Rights. We all need to continue to work together in a time of great uncertainty in the process of the UK withdrawal from the EU. However, what is certain is that this society still needs a Bill of Rights.

## POLICING AND DEALING WITH THE PAST

Paul O'Connor, Director, Pat Finucane Centre

**Paul O'Connor** is a prominent human rights campaigner in Northern Ireland. He is currently Director of the Pat Finucane Centre (PFC), a non-party political, anti-sectarian human rights group advocating for a non-violent resolution of the conflict on the island of Ireland. PFC offers free advice and support to any family bereaved as a result of the conflict.



Our main work at the Pat Finucane Centre is advocating on behalf of families. We work with several hundred families out of offices in Belfast, Armagh, Derry, and Dublin with Justice for the Forgotten, which is a project of the Pat Finucane Centre as well. Most of our work is actually below the surface and people would be entirely unaware of what we're doing on a day to day basis supporting families.

I just want to put some disparate thoughts out there based mostly on our own work, our day to day work. I'm not feeling overly optimistic this morning, I must say, with the way things are going at the moment on the wider stage. I came back from London last night and what's happening there at the moment, what's happening here, what's happening in the States and so on, it's a bit of a dreary prospect. In terms of our own parish here, I think it's fair to say that probably one of the biggest problems we face is that within unionism at this moment in time there is a belief that legacy in particular is a Trojan Horse. That legacy is absolutely toxic. That it's been driven by groups like ourselves whose motive is to undermine the Union and to undermine the memory of those members of the security forces who died.

I'll reflect back on the first time I was invited by CAJ to speak on the issue of dealing with the past. It was actually before Drumcree and before the Omagh bombing. It was before many changes that have happened in Northern Ireland. I do think there has been massive progress around the issue of policing, although I live in Derry so am very aware of the ongoing problems.

Recently in Derry [in September 2019], there was an incident involving 20-30 people attacking the police. It was not a large group of people who were actually rioting, it was a fairly small group. What I thought was positive, and we said this afterwards to the PSNI, is that no plastic bullets were fired. Now, that meant that rioters were able to get a lot closer to the police Land Rovers, as we've all seen on television – but had the PSNI fired plastic bullets, that would have been a catastrophe. So I welcome the fact that this didn't happen. I think there has been massive positive change and I think we have moved on, but we're still facing massive issues in terms of legacy.

I want to throw out some thoughts from our work. Maybe it will interest people, maybe it won't, but around legacy one of the key issues is prosecution. We have a former soldier, Dennis Hutchings, who was arraigned at Belfast High Court two days ago in connection with the death of John Patrick Cunningham in Tyrone. I don't want to say anything too specific about the case because it's an ongoing legal case. I wish some people in the UK parliament would take the same view of *sub judice* because they have broken parliamentary procedure and constantly commented on these cases. We've written to the Speaker of the House of Commons [at the time John Bercow] about this on numerous occasions and he agrees it's completely unfair.

On that issue, how do these prosecutions come about? One view, if you read the *Daily Mail*, is that the prosecutions arise because there are rich lawyers based over here who are making a fortune by taking on these cases. The truth is very different. Generally, what has actually happened is that families have received reports from the [now defunct] Historical Enquiries Team (HET). As a result of those reports, they've applied to the Attorney General to have a new inquest. The Attorney General has said, "I don't believe this case warrants a new inquest; I believe it warrants a new investigation", because quite often the case has not been previously investigated, especially if it involves an army killing from the early 1970s [when an agreement between the army and police meant that soldiers involved in fatal incidents were rarely interviewed by police officers]. The case has then been referred by the Attorney General back to the Public Prosecution Service (PPS), who in turn refer it to the Legacy Investigations Branch (LIB) of the PSNI so they can decide whether or not it passes the twin test for prosecution. If it does, the case goes back to the PPS to be pursued further.

The only lawyers involved in that process are ones who are civil servants working for the Public Prosecution Service (as opposed to those rich lawyers envisioned by the *Daily Mail* and *Daily Telegraph*). The family of a victim are not legally represented in court if there is a prosecution. There's no legal aid available. It's a much different process than many people think today.

I want to take on another issue today, namely the use of archived materials. People will often say, "The State kept archives, but the terrorists didn't keep archives," and let's face it, when they say this, they're usually talking about the IRA. They mean that the IRA didn't keep archives and that's completely true. In our experience, the republican movement has not been more forthcoming than any other group when we have been asked by families to approach them for information. The Boston tapes situation has certainly closed that down even further [these tapes contain interviews with ex-paramilitaries. The recordings were originally held in a library at Boston College, but the PSNI later gained access to them for use as evidence in ongoing murder inquiries].

It is true that the IRA didn't keep archives, but what do people seriously think are held in the government archives, the special branch archives, and the military branch archives? Do they believe they contain information about wrongdoing by the security forces? Of course they don't. Those archives are almost completely about the IRA over the 30-40 year period of conflict. They're not about the state. They are about the IRA almost entirely.

The Pat Finucane Centre met with the Legacy Investigations Branch recently: Their view was that the implementation of the legacy mechanisms in the Stormont House Agreement (SHA) is at least two, possibly three, years off. Before we began today, it was mentioned to me that the whole issue of the Stormont House Agreement apparently isn't in the Queen's Speech. It's not moving forward anywhere quickly. Some people might welcome that. I know there's a number of groups that have said the legacy aspects of the Stormont House Agreement should be scrapped and that the whole thing should be passed over to the PSNI so they can do the investigations themselves. However, in saying this they are forgetting that the prosecutions currently ongoing in NI are the result of the PSNI investigations. It is the PSNI who have charged and arrested these former soldiers – including Soldier F. People need to remember where these current prosecutions are coming from.

But what happens if we don't introduce any legacy mechanisms? And I think it's possible that we won't. I think it could potentially all collapse because the atmosphere is entirely poisonous. I also believe that very wrong and irresponsible advice is being given to families and being given to victims. I honestly believe that the main mechanism within the Stormont House Agreement – the Historical Inquiries Unit (HIU) - would benefit as much a nationalist family in West Belfast as it would benefit an RUC widow in Fermanagh. I believe it would benefit as much a victim of an IRA bombing in England as it would a UDR family in Tyrone. It is meant to be a mechanism which applies right across the board.

What happens if the Stormont House Agreement isn't instituted? Well, what the Pat Finucane Centre is involved in at the minute is a large number of inquests. We're supporting families in the Ballymurphy inquest and there's been two weeks of hearings in Belfast recently where a number of other inquests have been scheduled. There's one being scheduled today on the death of Thomas Friel, who was killed by a rubber bullet in Derry. Today the judge is sitting down and deciding when it's going to start, what kind of information is going to be available, how many witnesses are being called, etc. So we have inquests ongoing.

We also have PSNI investigations ongoing through the Legacy Investigations Branch. But that's painfully slow and I think they've said themselves it would take at least 30 years to deal with all of the unresolved cases. The past and present Chief Constables have said very publicly, "We don't want to deal with legacy. We want to deal with present day problems." But unless the SHA institutions are set up, the PSNI will continue to deal with legacy, which will continue to damage and poison their relationship with the various communities and cause distrust. And they're fully aware of that. I have no doubt about that.

On top of this, there are major investigations going on at the moment led by the Police Ombudsman for Northern Ireland into Glenanne and into a number of other linked cases. Again, I know that doesn't please many people, but it is a legal requirement. Outside investigations will also continue to happen, such as Operation Kenova, the Military Reaction Force investigation, and so on. For example, we had the Bernard judgment earlier in the summer where it was held by the court that the Glenanne series of cases must be looked at by a body that is compliant with Article 2 of the European Charter on Human Rights [i.e. the right to life]. This means a body outside of the PSNI. The Chief Constable told us two weeks ago he is currently looking for an outside body to look at the case. So investigations are happening anyway and will continue to happen regardless of what comes next.

Now the thing that annoys me in all of that is that I know there are a lot of families out there that do not have the benefit of these mechanisms. By this I mean RUC widows, army families in England, and victims of the IRA right across the board. They don't work with us. They probably don't like us at all or what we do. But they are still out there without appropriate support and they're being told by certain politicians, by certain sections of the media, by certain advocacy groups, "This is all poisonous, don't go there – it's all a republican Trojan Horse." I think that is to their great detriment and they will be sitting in five to ten years still waiting for an appropriate mechanism if we don't set up the HIU.



# MANIFESTO FOR A RIGHTS BASED RETURN TO POWER SHARING

Patricia McKeown, Co-Convener of the Equality Coalition & Regional Secretary for Unison

**Patricia McKeown** is Regional Secretary of UNISON, the Public Service Union, and one of the most senior trade unionists in Ireland. She is also the longstanding Co-Convener of the Equality Coalition. From 2007 to 2009, she was President of the Irish Congress of Trade Unions (ICTU). Prior to that, she was Chairperson of its Northern Committee (from 2005 to 2007). Currently, Patricia is a worker representative for Ireland on the EU European Economic and Social Committee.



UNISON, along with the Committee on the Administration of Justice (CAJ), co-convenes the Equality Coalition. The Coalition was born in 1998, around the time of the peace agreement, and extensively intervened as the Northern Ireland Act 1998 was making its way through Westminster, particularly on the equality and human rights provisions. It has expanded as a civil society alliance ever since and remains particularly concerned about the implementation of all the equality and human rights measures promised by the peace agreement.

We have now spent almost a thousand days without a government in Northern Ireland. That in of itself is disturbing. What is probably more disturbing is the lack of reaction from us, the people, at a time when democracy in many aspects and in many places is under threat. I have argued for a long time that we have been too patient, too polite, and too understanding in the hope that the power sharing we were promised would actually work.

There were one or two limited civil society initiatives in recent months that attempted to put pressure on for the return of our devolved government, but they appeared to merely call for the return of something that had catastrophically failed as opposed to the return of something resembling what was originally intended by the peace agreement. For that reason, the Equality Coalition put together a Manifesto for a Rights Based Return to Power Sharing. In this, we set out what we believe to be the key human rights and equality commitments that must be implemented if we are to have the return of a properly functioning government. There is no point in devolution being restored exactly as before, only to fail for the same reasons again.

Our manifesto is in three parts – we deal with the need for the full implementation of the rights in the peace settlement; we deal with the need to implement international obligations; and we deal with the need for mechanisms to ensure that power is working within the rules. We put the manifesto together in collaboration with the members of the Equality Coalition. Our members range from relatively small, single-issue organisations right through to the biggest of them all, which is the Irish Congress of Trade Unions (ICTU). We realised that what we were putting together was a summary, if you like, of the work and concerns of NI civil society groups over the past 20 years. It is disturbing how much remains undone. It was very straight forward promises which convinced people that it was a good idea to vote for the peace agreement in the first instance, and yet many of these promises were not fulfilled.

On the issue of the full implementation of the rights provisions in the peace settlement, we haven't been totally comprehensive. What we've done is chosen to highlight measures identified by the Equality Coalition members as key to securing the return of a functional government. We start with calling for an enforceable and inclusive Bill of Rights, a demand which has been ours from the beginning and is one that

must be pursued. Had a Bill of Rights already been in place, we believe that we wouldn't have seen the collapse of devolution. Furthermore, a comprehensive Bill of Rights would offer some mitigating protection against the impact of Brexit. We're going to hear more about that later.

As is also set out in the manifesto, we want an anti-poverty strategy, based on objective need – this was promised in the St Andrews Agreement and is a legal requirement following a judicial review taken by CAJ. We want the implementation of an Irish Language Act, also as per the St Andrews Agreement. We want to see measures that ensure the full and equal participation of women in political life. We want to see the full implementation and the rigorous enforcement of Section 75 of the Northern Ireland Act 1998. The rollback on S75 has been extraordinarily dramatic, not just over the last 20 years, but most particularly during the term of office of our last devolved government. We want to see the proper application of the Petition of Concern. It's not about changing it, it's about applying it in the way it was supposed to be applied – which was as a mechanism to protect human rights and equality. Ironically, it has been turned on its head and abused and used to prevent the implementation of equality and human rights measures.

We want to see the full implementation of the reforms to policing recommended in the Patten report, with accountability and oversight for all law enforcement bodies. This includes effective oversight of immigration officers, something that has become even more important as we watch the approaching problems that we will face with Brexit. We want full acceptance that it is the birthright of those born in NI to choose to take British or Irish citizenship, or both, on the basis of total equality. We want a commitment on the incorporation of the European Convention of Human Rights (ECHR) into law, and an agreement not to weaken or repeal the Human Rights Act.

Now, most of what we're asking for is vested in the powers of a devolved government, but you will see very clearly there are some things here that must be done by the British government. One of the reasons we campaigned all of those years ago for the responsibility of delivering an inclusive and enforceable Bill of Rights to be vested in Westminster was because we knew we would not secure political consensus for it in NI.

On the implementation of international obligations, the first two issues we highlighted have moved on since we produced the manifesto. The first was full compliance with the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), particularly on reproductive rights. The second was the implementation of international standards on LGBT rights, including the right to marriage equality. We know that there has been movement on both these issues, though there's still a long way to go in terms of abortion rights.

We also want to see compliance with Articles 2 and 3 of the ECHR on the matter of dealing with the legacy of the past – that includes the implementation of the Stormont House Agreement (SHA) in a human rights compliant manner and it includes the release of monies for the Legacy Inquest Unit. We want to see effective remedies for the victims of historical abuse. We also want to see compliance with the commitments contained within the UK / EU political agreement that promise there will be no diminution of rights as a result of Brexit. That, of course, is not looking in a healthy position at the minute.

We've just returned from lobbying in Washington as part of a delegation consisting of the trade union movement, business sector, the equality and human rights sector, and civil society. The Northern Ireland Civil Service were also there (though not part of our delegation) and probably for the first time in 20 years they were speaking with the same agenda. A remarkable situation has developed. I would not say there's unanimity on the issue of equality and human rights, but there is unanimity on the fact that we are facing a calamity. Yet actions that could have mitigated against the negative impact of Brexit has not been implemented. Hopefully that mindset can be changed now.

We're also very clear in our manifesto that we want to see compliance with the UN Convention on the Rights of the Child (UNCRC), the Convention on the Rights of Persons with Disabilities (CRPD), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). We want to see protections against racial profiling and racist discrimination, and an end to the hostile environment measures that are being implemented in NI – particularly as Brexit comes forward. We're also very clear that we want to see human rights standards established in housing provision. We single out North Belfast and the situation faced by Irish Travellers in our manifesto, but in general what we want to see is compliance with international standards on housing. Additionally, we want a single equality act to be legislated for in NI. The lack of this makes us almost a decade behind the other UK regions. We also want to see compliance with UN and Council of Europe recommendations on tackling hate expression and incitement to hatred – including properly defining sectarianism and good relations.

To that end, the Equality Coalition has invested much time, effort, and resources in trying to do that work ourselves. With the help of Dr Robbie McVeigh and Professor Christine Bell, we have produced alternative definitions of sectarianism and good relations, and we are currently doing further work on sectarianism and how that should be tackled. All of this is work being done by civil society organisations on a voluntary basis when really these actions should have been taken by our government before the collapse of power sharing.

The final part of the manifesto relates to ensuring that power is working within the rules. We want to see very simple things like ensuring the civil service refuses to act on ministerial requests that either cause discrimination or assist discrimination – there has been enough evidence revealed recently to show that this was not happening before. Had it happened, we wouldn't be facing some of the issues of discrimination we're facing today. For example, we wouldn't have crazy and offensive things like the renaming of a fisheries boat because the original name was in Irish. We wouldn't have the Department of Education abandoning the use of Irish language without consultation with anyone else. We want to see resource allocation on the basis of objective need, non-discrimination, and due process being followed when decisions are made. That's what the peace agreement originally promised and that's what we want.

We want to see the proper application of the Section 75 statutory duty – as I've already said there has been a remarkable rollback on this, particularly during the last term of government. We want to see rural needs impact assessments implemented as well. We want the state to honour its obligations in respect of human rights treaties and recognise that they form a binding legal framework on public bodies to act compatibly with them. Finally, we want to see improvements in relation to the Ministerial Code. We want to see record keeping. We want to see Freedom of Information (FOI) duties properly exercised and we want to see NI-specific open government commitments on improving transparency, accountability, and citizen participation.

There was a brief period of hope at the start of devolved government that we were starting to see real engagement and transparency. The doors are firmly shut now. We're in limbo; we have neither government, nor direct rule, and we now have to guess what's going on behind the closed doors. We are not prepared to accept that. This manifesto is a summary of the work of so many organisations. Our next challenge is to decide how we mobilise around this - we've got to do more than repeat the same tired mantras, such as "stop paying them" or "bring them back and make them do a job of work". There must be a rights based return to power sharing, otherwise it's got to be something else.

The manifesto is available here: <http://bit.ly/2VEEC8n>



## PANEL 2: A RIGHTS BASED SOCIETY AFTER BREXIT



### CHAIR:

Eilis Barry, FLAC (right)

### PANELLISTS:

Siobhán Mullally, NUI Galway (left); Úna Boyd, CAJ (centre-left); Louise Coyle, NIRWN (centre-right)

## IMMIGRATION, CITIZENSHIP AND THE COMMON TRAVEL AREA (CTA)

Úna Boyd, Immigration Project Coordinator, Committee on the Administration Of Justice (CAJ)

Úna Boyd studied International Human Rights Law at the Irish Centre for Human Rights and interned with Amnesty International Ireland. She began working in the field of asylum and immigration law as a paralegal and went on to qualify as a solicitor at Queen's University Belfast. Úna headed the immigration department of MSM Law from 2016 and in 2019 took up the post of Immigration Project Coordinator at CAJ.



Immigration may not seem like a very obvious topic when we're talking about the peace process. It certainly may not have been much in discussion at the time the Good Friday Agreement (GFA) was being drawn up, but I think that what we've seen in recent years is that immigration is having a real impact on the promises and the assurances of peace here in Northern Ireland. Unfortunately, that's mostly because the immigration regime is full of rights abuses. It has exposed deficiencies in the implementation of the Good Friday Agreement, and it's also called into question systems that we probably would have considered to be set in stone – like the Common Travel Area (CTA).

One of the areas that has been very widely covered in the media and elsewhere is citizenship in Northern Ireland. I think previously most of us thought this was sorted. The question of how exactly citizenship works here was never challenged or looked at in any detail until the Emma DeSouza case, which I think most people in the room will be familiar with. Essentially, this case involves the UK government saying persons born in Northern Ireland cannot identify solely as Irish, that they will be treated as automatically British. That does seem to fly in the face of the Good Friday Agreement, which says that persons born in Northern Ireland can identify as, and be accepted as, Irish or British, or both.

It's an interesting one because this case arose from a simple immigration matter. Emma DeSouza wanted to bring her husband, Jake, who is from the USA, to come to live with her here in Belfast. When she applied for a residence card for him, she identified herself as an Irish citizen in the application. The Home Office rejected her application on the basis that it considered her a British citizen. The UK government's eagerness to take this very, very strong stance that she was by default British really just stemmed from their eagerness to keep as many people as possible out of the UK. It was in court two weeks ago and we're in this extraordinary position where an immigration appeal has led to the UK government fighting against the argument that they should be implementing the Good Friday Agreement – saying in court that everyone in Northern Ireland is British. That they have to renounce British citizenship in order to identify as solely Irish. I think the direct quote is: "A treaty [the UK government] is a party of, does not alter the laws of the United Kingdom". This all arose from an immigration matter.

Since Brexit, the intersection between immigration and rights here in Northern Ireland has become even clearer. Essentially, at the moment, we've got British, Irish, and EU nationals, who have access to a fairly wide range of rights. We have non-EEA citizens, who are very heavily restricted. Brexit changes this. The UK is leaving the European Union. There is now a question mark over what will happen to EU citizens living in the UK, which includes Irish citizens in Northern Ireland. Their rights have never really been an issue before. That was thanks to the EU.

During the Brexit negotiations, this was actually addressed. It was decided that the people of Northern Ireland who are Irish citizens will continue to enjoy rights as EU citizens, including where they reside in Northern Ireland. A commitment was made to examining the specific arrangements required to give effect

to the ongoing exercise of, and access to, their EU rights, opportunities, and benefits. Unfortunately, paragraph 52, which covered this, basically disappeared. We haven't seen any arrangements put in place for this. Instead, what we have is the Withdrawal Agreement, which has allowed for EU citizens to protect and access certain EU rights after Brexit through applying to the EU Settlement Scheme. That might seem simple enough, but the Home Office advice is a little bit more complex. Essentially they say, if you're Irish you may apply if you so wish, but you don't have to. On the other hand, if you're an Irish citizen born in Northern Ireland the choice is completely taken away because of the policy that came up in the De Souza case: essentially, they're going to treat you as automatically British, so you're excluded from the scheme.

A whole rake of issues come out of this. One of the most obvious ones is you've immediately got two tiers of Irish citizens. A person born in Dublin living in the UK can access the settlement scheme. It's not perfect, but it does create a legally enforceable way of protecting EU rights. A person born in Belfast living in the UK can't apply to this scheme. They are excluded from it, and it brings up a lot of issues. One of the most obvious ones is this: if you're relying on your Irish passport and you're born in Northern Ireland, you are going to possibly struggle to access services. You could very easily see the situation where you're going to a doctor's office or a job centre, and they say, "You have an EU passport, you didn't apply to the settlement scheme. This is quite complicated, we don't know how to register you". Perhaps they then decide, "Oh actually, you're grand, you're born in Belfast", and then tick the box that says you're British, whether you want them to or not. That's just one small example, but it immediately flies in the face of the citizenship and identity provisions of the peace process.

It's worth bearing in mind that this all happens alongside anyone in Northern Ireland who identifies as solely British losing access to all of their European rights, with no way of securing them. Yet Home Office doesn't seem particularly bothered about any of this because they believe the Common Travel Area solves all of these problems. They say that it protects reciprocal rights and that's why Irish citizens don't need to apply to the settlement scheme, and why anyone born in Northern Ireland doesn't need to worry either. This constant assertion by the UK government caused CAJ to go and look at the Common Travel Area, which is something that most people would have considered fairly set in stone before all of this. Unfortunately, it turns out it's not what most of us probably thought it was.

The Common Travel Area was never really legislated for in an enforceable manner. It's essentially a series of loose administrative arrangements. The reason that this never caused any issues before is because both the UK and Ireland joined the European Union. A lot of the gaps, a lot of the things that would have arisen, never did because EU law just came in and filled them all in. Now that the UK is leaving the EU, these unforeseen gaps and issues are becoming evident.

There is some work being done on this: we have a social security convention between the UK and Ireland, and we have a memorandum of understanding on the Common Travel Area between the UK and Ireland, which isn't legally enforceable, but at least it's something. However, much of the work that needs to be done to secure the rights that the UK government are claiming are protected by the Common Travel Area just simply hasn't been done. If it remains undone, it's just going to create huge issues. One frightening example is that, currently, an Irish citizen only has the right to enter the UK from outside the Common Travel Area under EU law - that would presumably include a person born in Belfast who is travelling on an Irish passport and flying back into Belfast International Airport after a holiday abroad.

Luckily, the UK government spotted this rather glaring issue and they very graciously drafted a section into the Immigration Bill to allow Irish citizens to enter the UK from outside the CTA. The lack of clarity also makes it easy to deport Irish citizens, but I'm not going to go into that right now. Unfortunately, the Immigration Bill is stalled in Parliament. It's not going to be passed before the 31 October 2020 [the

original proposed 'Brexit day']. If we leave the EU on that date without this bill being drafted into law, I believe the only basis an Irish citizen would have for entering the UK from abroad would arise from secondary legislation, which was designed to allow EU citizens to enter the UK for only up to three months. I don't really need to go into how many issues that raises for Northern Ireland.

Another issue is that when we talk about the Common Travel Area, we're always told it's a passport-free zone. That's been crucially important to the peace process, to North-South cooperation, but, again, that's not really correct. What we are seeing is ad hoc checks occurring within the Common Travel Area. We frequently see people stopped on ferries between England, Scotland, and Belfast, and we're seeing a big increase in people stopped on cross border buses and asked for identification. The legal basis for these checks is extremely murky. A lot of the time counter-terrorism legislation has been wrongly invoked. Frequently, the checks are carried out on fairly blatant racial profiling. I think it's quite interesting that while everyone talks about the implications of a hard border for peace and stability in NI, it already exists for people who don't fit the stereotype for what a British or Irish person looks like. I think any of these checks happening has to be watched very carefully because it aids in a slide towards a hard border, with all the impacts that could have on peace and stability here.

Most of these examples hit home because it's probably the first time most people in Northern Ireland are realising how the immigration regime and the Home Office could directly impacting their rights, their home, and what they see as very secure and important things – peace, stability, equality. There are huge issues already, but it is probably going to get worse.

Even under our pre-Brexit system, with only two main categories of citizenship (EU/ EEA citizens and non-EU/ EEA citizens), the Windrush scandal still happened. After Brexit, we're looking at a much more complex situation, with many more categories of citizenship. Given that the current immigration regime is one of chaos, mismanagement, and widespread human rights abuses, I don't think it's much of reach to say things are about to get a lot worse.

This impacts everyone. Immigration may not have been talked about much at the time when people that were planning for peace here, but I think it has to be in the discussion now. It has to be on the table because it will impact anything that we're trying to build in future. We talk about the promise of the peace process being the creation of a rights-based society – this society has to be for everyone. Everyone at this table and onwards.



## RIGHTS ON THE ISLAND

**Siobhán Mullally, Established Professor of Human Rights Law & Director Of The Irish Centre For Human Rights, NUI Galway**

**Siobhán Mullally** is Established Professor of Human Rights Law and Director of the Irish Centre for Human Rights at NUI Galway. Prior to this, she held a full professorship in Law at University College Cork. She has also held lecturing positions in the UK and Pakistan, as well as visiting positions at universities in the USA, Canada, Australia, and India. Siobhán has published widely in the fields of gender, women's rights, migration, asylum and multiculturalism; and is the founding Joint Editor-in-Chief of the Irish Yearbook of International Law. She is currently the President of the Council of Europe anti-trafficking body, the Group of Experts on Action against Trafficking in Human Beings (GRETA). She is a Commissioner with the Irish Human Rights and Equality Commission, and is a member of the Permanent Court of Arbitration, The Hague.



I've been asked to talk about the "equivalence of rights on the island of Ireland". This of course is a phrase taken from the Good Friday Agreement (GFA) itself. Over the years, there has been a lot of discussion and reflection as to what this means. At the time of the drafting of the peace settlement, clearly it was intended to be about North-South equivalence, in particular in relation to Ireland's failure to give effect to the European Convention on Human Rights (ECHR) in domestic law. However, this issue was remedied several years later when Ireland enacted the European Convention of Human Rights Act 2003. Since then, we have been trying to argue from within civil society that 'equivalence' needs to be understood in a much broader context, and that we must look at the equivalence of rights more broadly across the island of Ireland.

We've tried to look at very basic rules of treaty interpretation – the Vienna Convention on the Law of Treaties argues that you interpret treaty on the basis of its object and purpose, or that you can look at its text and context. We've argued that the object and purpose of that reference to 'equivalence' in the GFA was to ensure an equivalence of rights across the island of Ireland, while the context was a presumption that both the UK and Ireland would continue their membership of the European Union and that EU membership would therefore remain part of the backdrop of rights and equality protections across the island. However, there has been clear resistance to recent attempts to advance legal arguments on this basis.

What I want to focus on in this presentation is some of the rights that have been left out of the discussions on equivalence to date. A lot of these points have been touched on previously in the other presentations this morning. We've already discussed the limited nature of the human rights canon in all parts of the island, in particular with regards to outstanding questions around women's rights and gender equality, and around who is being excluded or marginalised within human rights movements and within human rights claims.

Anne Smith has already talked about the limited nature of discussions on the Bills of Rights, and the need to expand that further – to think about questions around sexual orientation, gender identity, reproductive and sexual rights, access to abortion, the rights of refugees and migrant workers, and socioeconomic rights much more broadly. I'm mindful of some of the comments made this morning around demanding too

many rights, or too long a list of rights. This has got me thinking of the late Iris Marion Young's criticisms of the human rights movement - she said that "the totalizing movement always leaves a remainder". I think it's useful to start from the point of those remainders, many remainders, and look at who gets left out, who gets excluded, and what's often missing from equality and human rights debates around the future of human rights on the island of Ireland. I'm going to refer to the UK's commitments to giving effect to international obligations to provide a snapshot of the remainders, the leftovers, the human rights issues that continue to be excluded, and the human rights commitments that are not being met.

As an example, let's look at some recent concluding observations relevant to Northern Ireland from the UN Committee Against Torture (UNCAT) [which were published in June 2019]. The Committee expressed its profound concern about the findings of the Historical Institutional Abuse Inquiry report from 2017, and about the fact that certain practices and institutions were not covered by the inquiry, in particular, the Magdalene laundries and mother and baby homes. This is a human rights issue that continues to have a profound impact across the island – the failure to ensure comprehensive redress or to have effective independent investigations into institutional abuse and its continuing legacy.

In relation to reproductive and sexual health, there's potentially going to be significant developments in Northern Ireland very shortly. We all know the refrain "the North is next". Access to safe and legal abortion was something that was not part of the human rights canon in Northern Ireland for a long time, and many scholars and activists here – Anne [Smith] and others – have written extensively about this. Even if we do see a significant change, there will continue to be questions, as there are in the South, around meaningful access across the island, around whether or not we have adequate services with adequate geographical distribution. What about those workers who are trying to ensure safe, legal access, but face recriminations in the workplace? What about the loopholes and gaps arising from conscientious objection? There are all kinds of questions that will remain even if we see significant change.

Linked to those questions, we have also seen many gaps in human rights movements in terms of the failure to pay attention to sexual and gender-based violence. Ireland has just this year ratified the Istanbul Convention (on 8 March 2019). The UK has not ratified the Istanbul Convention, though it has signed it, and there's a continuing delay around this. We've been distracted by other issues and, despite what we see in terms of increasing reports of domestic abuse crimes and sexual offences, the UN Committee Against Torture has highlighted, for example, the low levels of prosecution and conviction rates in these cases. Also, there remain major concerns that victims of a crime will have their immigration status shared when they report what happened to them. This may be deterring migrant women with insecure immigration status from reporting violence and abuse, or from seeking protection.

On human trafficking, the Irish Human Rights and Equality Commission (IHREC) and Northern Ireland Human Rights Commission (NIHRC) published a report recently on criminal justice cooperation arrangements and the many gaps as to what may be in place post-Brexit. These include gaps in relation to cooperation around the investigation of crimes, such as human trafficking. On both parts of the island, there have been significant criticisms around the failure to be proactive. This is despite it being a positive obligation under EU law - and also the Council of Europe and international law – to identify victims of trafficking and ensure effective access to protection and to compensation. The Committee Against Torture and the Committee on the Elimination of Discrimination against Women (CEDAW) have highlighted the extent to which victims of trafficking are forced into destitution because of the lack of long-term assistance beyond a short period of 42 days.

In reference to migrant workers, Úna has already mentioned questions around immigration and citizenship status, but more broadly the questions around protections for migrant workers remain very problematic. For migrant domestic workers, rights have regressed across the UK because of the so-called 'tied visa'.

Even though some amendments were made in 2016, the Committee Against Torture, the CEDAW Committee, and others, have highlighted the precarious status of migrant domestic workers and the continuing exploitation of them – from abuse by employers to them being trafficked for the purpose of labour exploitation. Pilot projects in the South to protect domestic workers by ensuring inspections in private households have been allowed to elapse instead of continuing. In the fisheries sector and the agricultural sector, migrant workers have been shown to have a very precarious status. Recently, there have been findings of human trafficking in the fisheries industry and interventions from four UN Special Rapporteurs. Those concerns continue across the island.

In relation to hate crimes, Ireland will be up before the Committee on the Elimination of Racial Discrimination (CERD) in December [2019] for the first time in 10 years so there's a lengthy record to be reviewed and assessed. We've already heard this morning about concerns in relation to the potential increase in hate crime and hate expression in the UK in the wake of Brexit. The Committee Against Torture has previously highlighted the low rate of prosecution and successful conviction of hate crime in the UK, referring to estimates that only 2% of all hate crimes result in a successful conviction across the UK. In Ireland, we don't have legislation for hate crime, and that is one of the big gaps that is being reported to the CERD Committee. Our incitement to hatred legislation, although on paper is comprehensive, is non-existent in terms of implementation and enforcement. Recently, we there has been concern that the political discourse around Brexit is inciting hatred, hostility, and potential violence. Meanwhile, in the South, in our recent Presidential election, we have seen political discourse targeting minority communities – particularly the Traveller Community – and the lack of effective response to hate expression.

Many gaps have already been commented on this morning in relation to equality legislation, with the UK's own equality act not extending to Northern Ireland. There has also been a failure to tackle intersecting and combined forms of discrimination, and a continuing lack of legislative responses to socioeconomic inequalities. Those arguments are equally applicable to the South. Although there was once, in terms of previous movements, attention being given to the potential usefulness of equality and human rights budgeting again, those questions have lapsed in all parts of the island.

In relation to the women, peace and security agenda, the CEDAW Committee has highlighted its concerns around inadequate representation and participation of women in post-conflict reconstruction and peacebuilding processes in NI, as well as the low rate of participation of women in public life. That's equally applicable in the South, although we have seen the introduction of gender quotas in terms of the selection of political candidates, with a marginal increase in representation in parliament. Nonetheless, significant gender inequality remains in terms of representation and participation in local government in the South. That is something that must be on any agenda involving a renaissance of rights.

In terms of the gender pay gap and mandatory reporting on this, there are pending developments not yet realised on both parts of the island. Potentially, legislation will soon come into force in the South and we are also about to launch a new Citizens Assembly, this time on gender equality. One of the key issues that has been highlighted by the National Women's Council of Ireland (NWCI) is about due attention being given to the work of carers. This is something also highlighted by the CEDAW Committee in its concluding observations on the UK, particularly with regards to Northern Ireland, where soaring childcare costs are creating obstacles for women entering into, and progressing in, the workplace. In the South, in the context of discussions around the possible repeal of Article 41.2 of the Constitution (which refers to women's duties in the home), NWCI, IHREC, and others, have called for that provision to be revised to include a positive obligation on the state to support the work of carers through the recognition of socioeconomic rights and the value of care work. So far that's been resisted, but it's an ongoing question.

To conclude, I'd like to highlight two additional, final points. There was the recent visit of the UN Special Rapporteur on racism and xenophobia, Tendayi Achiume, who in her report highlighted particular gaps that are relevant across the island. For example, the lack of protection from intersecting and multiple forms of discrimination in the legal framework governing racial equality in Northern Ireland, and the adverse impact of immigration and border enforcement policies on racial equality – which are becoming particularly prominent in the Brexit context. The UN Special Rapporteur on extreme poverty, Philip Alston, in his visit to the UK earlier this year highlighted particular issues around part-time workers, low pay, and the disproportionate representation of women among part-time workers and among low-paid workers. These are issues that have also been highlighted by NIHRC in its mid-term submission to the universal periodic review of the UK.

That's just a snapshot of what I think should be included in an agenda in terms of a renaissance of rights. Any such renaissance must be an inclusive movement, which addresses intersecting and multiple forms of discrimination, and tries to start from the position of asking: Where are the remainders? Who is excluded? Who is marginalised from previous canons of human rights? It must work towards ensuring a more conclusive and comprehensive canon of human rights.

## DEVELOPING A BROAD-BASED, INCLUSIVE EQUALITY CAMPAIGN

Louise Coyle, Director, Northern Ireland Rural Women's Network (NIRWN)

**Louise Coyle** is the current Director of the Northern Ireland Rural Women's Network (NIRWN), having previously worked for the same organisation for several years as Policy Officer. NIRWN is a membership-based organisation that supports and promotes women in rural Northern Ireland.



The first part of my talk this morning is going to be about why rural women care about human rights. Why are we invested in this at all? The second half is about some of the potential solutions and some of the ways forward for progressing human rights.

NIRWN are a membership-based organisation. Everything that we do, everything that we say, everything that drives us is actually driven by our members. Our most recent piece of research is [Rural Voices](#). I will take you through some of the issues highlighted in this report by women: childcare and caring responsibilities; rural transport; social isolation, health and wellbeing; poverty and the economy; rural development and community infrastructure; and education and the training of women. The last chapter was on the most key emerging issue, which was Brexit.

None of these should be a surprise, but hopefully, they demonstrate how human rights are so entwined in the lives of rural women. Human rights cuts across all of those issues that people are dealing with every single day in their ordinary lives.

What is the current picture for women here today? Women in Northern Ireland are still economically, culturally, and politically unequal. Women continue to struggle with the dominant patriarchal structures that we have in our society and in every sphere of their private and public life. They're underrepresented in public life and in our political arena where we might be able to create change to address all of those issues.

The process for social change in Northern Ireland has been impacted obviously by our conflict. Post-Good Friday Agreement policymaking hasn't really improved matters for women here. The lack of gender parity that exists in Northern Irish society is, in NIRWN's view, and in our members' view, a key factor in hindering the development of a shared future. If we're not at the table, how do we shape the future? We need to be there.

We haven't been afforded the opportunity to participate equally in our country post-conflict as we attempt to transition into a peaceful society in the numbers and in the equity we should have been. That's having a negative impact on women and on socio-economic development. Why are we still waiting 10 years later for a childcare strategy for Northern Ireland? Those kinds of basic things are not happening because women are not at the table.

This is particularly problematic for those who were already experiencing some kind of disadvantage – what is being done to catch them up? The report from the UN Special Rapporteur on extreme poverty and human rights, Professor Philip Alston, was damning in terms of policy-driven poverty here. We're going backwards. We're not improving matters, we're sliding back. If your social and economic rights are being denied and you're not enjoying a quality of life that most of us would consider decent then what's the alternative? There are mischievous voices, people who are going to provide an outlet for you there, a different hope, a different way. I think it's imperative that our region has visible women at the decision-making level if sustainable peace is to be achieved.

When I say decision-making level, I don't just mean our politics. I mean everywhere there is a committee, everywhere people are deciding on things and how things should be moving forward – that's where women need to be. You need to look around the room and say; where are the women? Are they here? If they're not here – go find some.

We need, and we deserve, the implementation of the UN Security Council Resolution 1325 on Women, Peace and Security in Northern Ireland, as a post-conflict society. Basically, this resolution says that if you're signed up to the UN – as the UK is – you should be ensuring that in a post-conflict society there is a 50/50 representation of women because it is unequivocally proven that when women are at the table in those kinds of numbers and percentages – things change. Things improve in terms of peace, in terms of longevity and sustainability of peace, which I think is what we are all looking for here right now.

If the UK exits the EU, there are over 22,000 policies that can now be looked at, and changed, and amended or ditched – or whatever they want to do with them at Westminster. My concern is that, while Brexit is a problem for right now, Brexit is a problem for the future as well. There are going to be all kinds of stakeholder groups, meetings, committees to discuss some of these 22,000 policies – are women going to be there when those are being discussed? That's a challenge for us as an organisation, and I think it's a challenge for everyone.

If we look specifically at rights, and the rights that women in Northern Ireland have enjoyed, those have been because we were a member of the EU. Those weren't afforded to us because we had a local government here – I think we can all agree on that. So what we did enjoy, we may not enjoy in the future – things like maternity rights, working time directives – all those things that impact on every single woman, every single family. They're all now, potentially, post-Brexit, sitting in Westminster with a Conservative government who make no bones about the fact they're about business, finance, commerce, money. We know that it costs money to provide maternity, it costs money for working time directive legislation. I would argue that a happy workforce is a productive one, but we won't get into that. Those are where the dangers lie in the future if women are not at the table.

What kind of a society do we need for women? I would say a gender-equal society that affords the safety and empowerment of all women and girls. When I say empowerment, I meet so many super, fantastic, vocal women who are vocal in their communities – but they don't want to be vocal in this kind of arena. So we need to empower people to take their space, take their place, and have their voice heard. Their views are as valid as anybody else's. They don't need a degree, they don't need letters after their name, they don't need to belong to a political party – they just need to be able to express their experience and their views as a person.

Rural areas in Northern Ireland are home to 40% of the population. Particularly the further West you go, rural women experience what the Department of Agriculture, Environment and Rural Affairs calls access poverty. This means how far away you are from essential services and how easy is it to access things. The accessibility of education, training, work, and childcare; the cost of services; and the availability of public transport are all factors in determining women's participation, particularly in rural areas. Rural women are also that much further away from decision making spaces.

Obviously, I'm paid to do what I do, but you get called to meetings in Stormont at 9am and for me to get from my house to Stormont at 9am and deal with all the childcare issues that I have around that is quite a feat. If you were doing that in your own time, you would probably say, "Do you know what? That looks quite tricky for me", particularly if you were trying to do it by public transport.

A big issue for us has been the historic under-investment of rural women in Northern Ireland. Even within our wider women's sector here, rural women still need a stronger voice – we are 40% of women, but you don't see or hear that 40%. This is from the government's own report: "There are also stark inequalities between government funding for service delivery to women's groups between rural and urban (1.3% v 98.7%)". Whenever I throw this out at meetings, I think people think I am exaggerating but this is their own report – 1.3% of executive funding compared to 98.7%. So we're on the back foot already.

In terms of what NIRWN does, we provide a regional rural element of support through the Regional Support for Women in Disadvantaged and Rural Areas Programme, which is government-funded. There are seven organisations in this programme [together forming the Women's Regional Consortium]. It is supposed to provide equity for women across the region at a strategic level. I would argue the resourcing and financing does not reflect what the programme is trying to achieve. The vision is that women living in disadvantaged urban and rural areas will be provided with special support required to enable them to tackle disadvantage, fulfil their potential, and overcome barriers that give rise to their marginalisation and experience of poverty and exclusion. However, an independent evaluation of this consortium concluded that rural women needed additional financial support.

This is their quote: "The rural investment in proportional terms is not sufficient to animate and build critical mass versus urban interests [circa 20% of staff resources in the Consortium are linked to rural delivery, i.e. two 25 hour posts in NIRWN] which is out of step with the proportion of rural dwellers in NI."

So, even when those in power are saying they're taking action, are they really committed to making a change? It's imperative, I feel, for rural women in rural areas to have proposed future budgets assessed for rural impacts to ensure the inequity of government resources doesn't continue. Currently, when we challenge departments on their own evaluations, and ask what moves are being taken to address inequalities, there's no minister so "nothing we can do, nothing to see here people". Also, the Regional Support for Women in Disadvantaged and Rural Areas Programme was devised before the Rural Needs Impact Assessment Act came into place; therefore, they don't have to take account of rural need. So, we're back to what you absolutely have to do and what you really should be doing. Our government is only going to do the bare minimum.

We would highlight at NIRWN that the government support for the work of our organisation, which is the only dedicated regional service to support rural women in their communities, is now 13% of what it was in 2007. That's not a problem just for NIRWN and rural women, I would say that's probably reflective of a lot of community and voluntary sectors across the board – the reduction of funding. Yet they can still tick a box and say, "Look at this lovely vision, we're financing this, this vision of a wonderful future for women that are engaged and empowered", and it's about how we challenge that, how we challenge their words by reflecting on their actions. What are your deeds? We have enough of the words.

What kind of society do we need for rural women? A society where the voice of rural women is heard, access-poverty is addressed, and the resourcing of needs is equitable. It will be no surprise to you that a lot of NIRWN's work in the last year or two has been focused on Brexit. There are days, apart from any other reasons, when I'm glad there's no Stormont up and running, and we don't have to go to committees, and meet people, because I think where we would we find the time?

So what are the issues for rural women in relation to Brexit. I'm going to run through these:

- EU funding – The EU has always acknowledged the role of women in civic society and leadership, and have resourced it accordingly. I think part of that has meant we have let our own governments off the



hook in terms of actual delivery because there was money coming into rural areas through the rural development programme, peace monies, all of those things.

- Social and human rights – I touched on that already about the potential impacts.
- The peace process is a given. The whole framing of the Brexit debate from the very beginning has been polarising. It's been even more polarising here when our two big parties took such diametrically opposed positions on it and, if any of you do read NIRWN's research, a quarter of our members are saying this is just one more thing we can't talk about anymore because it's so polarising.
- Our border areas: Certainly, rural women who are living on our border areas are fearful. They're so fed up of the narrative being about trucks and tariffs and lorries. No doubt all those things are important, but what people in their homes and communities care about is the peace process, and also whether or not we are going to go back to that old fearfulness; the being watched, being checked at the border. All of those things. We're not far enough away from it to not still be very, very afraid of it.
- The uncertainty: Do any of us know what is going to happen next? A challenge for us as an organisation is to keep our members informed without scaring them, and to give them some kind of hope and actions to take about some of these things. Brexit will exacerbate pre-existing social and economic issues and so is just huge problem on top of the problems we were already failing to address, particularly through the peace process. That's why I refer to it still as a process, we are nowhere near finished.

There are a number of challenges for the future:

- A timeframe for Brexit; who knows what it is?
- Our local government; are we ever going to have one? The one we had wasn't working, it was very toxic from a community voluntary sector point of view, even with regards to how funding was being distributed. There was a lot of shady wheeling and dealing going on. We certainly don't want to see that again. Do we need local governance? Maybe we do. I would say that Brexit has really highlighted questions around whether UK devolution, as it stands, is working. If the voices of Scotland and the voices of Northern Ireland in a referendum debate are entirely ignored, has it been working? I'm not sure that doesn't mean we don't need a local government, however.
- The lack of a unified political position gives us no voice. When Martin McGuinness and Arlene Foster sent that letter out on Brexit early in negotiations there was quite a unified voice saying that this may be potentially bad news for us, and we need to be careful and mindful of the impacts on Northern Ireland. Had we had that unity as this has progressed, I think we wouldn't be in the mess that we're in right now.
- The budget; how do you impact any future budgeting if there's nobody there to make any decisions? We don't have direct rule, or do we? We have some kind of something going on, but certainly nothing that's accountable, or anything that you can properly engage with.
- Our border is obviously going to be an issue for the future
- The general lack of clarity and any kind of way forward to navigate through current issues.

Despite all of that, we still have to live here, we still have to get along with our lives, we're still all doing what we do. So what kind of society do we need? And how do we build it? Our view in NIRWN is drawn from our members, who come from across all of the political divide.

Recently, I was meeting a German delegation who wanted to know what was going on here, and he said, "Well, when you have a group of women together, are they against each other? Like the nationalists and unionists?". And I said, "That's a very, very rare occasion that would happen because when you start

talking about childcare, transport, those kinds of things, our problems are across the board. Our problems are shared. Our problems are universal.”

We don’t get into the ‘Orange and Greenness’ of it all. The dialogue is centred on rights; what rights do you feel that you need? Are they language rights? Bodily autonomy? Is it marriage equality? Is it a right to be free from poverty? If I want, for example, language rights, I also need to support the people who want marriage equality. We need to recognise that. If we even take homelessness as an example, I think there are some statistics that say most of us are only two or three paycheques away from homelessness. So homelessness may not be a problem for me today, but potentially in my lifetime it could be. It could be a problem for my sister, for my friend, for whoever – and that’s how we need to see all of these issues. To allow somebody else to enjoy their rights does not impact on yours. They belong to each and every one of us.

I’ve put in a quote here from Eleanor Roosevelt - who really said it better than I could - about how universal human rights are actually about the local and the small:

“Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.”

And that’s the key bit at the end: Where is the concerted citizen action here in Northern Ireland?

Whenever I was looking at the title for today’s conference, I probably did what most of you would do and considered what kind of society we need. It’s a big, big question, and there’s probably a lot of answers, but it comes down to this – how do we want our children and grandchildren to be living? How do we want to be living? What kind of legacy do we want to be leaving behind us? How are we making it happen? Are we just letting it happen to us?

On Tuesday morning, I started my day scrolling through Twitter to see what’s going on, what happened while I was asleep? Probably nothing much but this was on the BBC News Twitter: “An ex-priest’s IRA confession, banners and flags in Belfast and an improvised weapon found at a school make the headlines in Tuesday’s papers”. It did take me aback a bit. I thought, “We’re going back to pre-1998 headlines here if those are our top headlines.” We all know there is editorial discretion – but are these the headlines we want to see, ever? Never mind in the next year, 5 years, 10 years; and how much worse could those headlines potentially get? I think we all know, because we’ve lived through it before, how potentially bad they can get. What are we doing to stop this slide? Sometimes, I think, the unionist community feel that the whole conversation about equality and rights is being framed in a nationalist context, and not as something that belongs to all of us. And therefore people start getting suspicious and fearful, and start to question what is it they’re really trying to do? What are they trying to take from us?’

I have this poster of ‘Equality versus Equity’ up on the wall in my office – because I think that sometimes when we’re talking about equality, what we actually mean is equity. We get a lot of stuff, in terms of equality, with people saying, “No one is stopping women coming in, nobody is stopping you. The problem is we ask for women to come and nobody comes.” It’s about removing the barriers to include people. So, this poster is made up of three different images:

- The first picture illustrates equality – everyone has been given a box to stand on to help them see over a fence, but unfortunately, one poor guy is too short and can still see nothing. That one box is really of no benefit to him.
- In the second picture, the short man now has two boxes because he has been given one from the tallest person. Yes, it appears that the latter man has lost his box, but he can see perfectly well without it – just as well as he could in the first picture. Nothing has been lost. The point here is that just because somebody else has gained something doesn't necessarily mean that you have lost.
- In the last picture, which is my favourite of all, there is no longer a fence. The barrier was removed, nobody needs a box to help them see, and that's where we are hopefully trying to head towards.

If we agree that current politics are definitely not providing us with any answers, if we agree that there is a silent majority of moderate voices, but yet it's the extremists who get heard (who get the soapbox as it were), we need to find a way to have those silent voices heard, and we need to challenge the vocal minorities. We have lived in a society where it was fortuitous probably to keep quiet; keep your head down, keep moving on, don't catch anyone's eye, and just survive. We're now passed that, but we still have this culture of "I don't want to be the difficult person, I don't want to be starting a row, I don't want to create tension", but I think we need to start. I think we absolutely need to start having ourselves heard.

There are opportunities in the middle of all this craziness to engage civil society and, in NIRWN's case, rural society, in new policy planning and development. There are also opportunities for better collaborative working, for a Bill of Rights for Northern Ireland, and to deliver on the Good Friday Agreement. I think Brexit has shone a light on how much we have let the powers that be get away with, how much we sat quietly and thought, 'Well they say they are going to do it so they probably will!'. We were so grateful to be living post-conflict, or certainly in a more peaceful situation, that we let it slide and we didn't hold them to account. I would also like to see an achievement of a more regional balance of support, and for more visible women.

A reduction in funding across the community and voluntary sector, and civic society organisations, has meant that we have had to explore collaboration: the power is in the togetherness. You can't fund something major by yourself, you have to look for friends. Power can be found within any sector in a society if you're working in a team, if you're in a family, whatever it is, you have to join together. Sometimes you have to put your own needs aside for the benefit of everyone else. In this last year, NIWRN have campaigned and collaborated on many projects that we would never have had the resources to do by ourselves. For example:

- We have worked on the Cliff Edge Coalition, which is about the mitigations for Universal Credit stopping in March 2020.
- We're part of No to No Deal, coordinated by the Human Rights Consortium and others. We're a civic society organisation that has come together and said, "no matter how you voted on Brexit, that ship has sailed. We need to be looking at this now and saying a no-deal is not a good thing for us".
- There was also the People's Proposal which was certainly coordinated by PPR (if not led by them) where lots of LGBT and civic society organisations came together and campaigned for the Department for Communities to have a human rights checklist when they were doing Universal Credit and PIP assessments.
- We're part of Childcare for All. We're still waiting on a childcare strategy in NI, so all the groups and people working on that issue have come together in one campaign.

- We've worked with the Centre for Cross Border Studies to look at a new Common Charter for work within, and between, these islands. There is one thing we can't get away from – we live on an island. We have a very close neighbouring island. We need to find a way to live together.
- NIRWN is also a partner in a new project that has just recently been launched called 'Raise Your Voice' about tackling sexual harassment. It was really prompted by the rugby rape trials and the conversations that were going on around about what was acceptable behaviour and what actually constitutes sexual harassment.

There is a lot going on, there are plenty of opportunities to work together to get things done. We need to take individual responsibility as people, we need to have the difficult conversations. I was reading some early research into the Repeal the 8th campaign in the Republic of Ireland and one of the really powerful things they did was to encourage people to have conversations with people in their family, people who they're sitting beside on the bus, just people who they meet – and that's what we need to do.

We need to seek out likeminded people in organisations. We need to amplify their voices and seek support to amplify our own. Our strength is our togetherness. We need to stand together. If one of our rights is under threat, or is not being realised, it impacts us all. And, as Margaret Mead is quoted as saying: "Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has."

I think we're very insular here – we need to start looking up and out. We need to work within that global context and look at the other things that are happening outside us. There are the Sustainable Development Goals, and I think if we achieved all of those here in Northern Ireland, we would be very happy. We need a hopeful society, and I am full of hope because we have made progress before, and we have the template with which to start really moving forward again. There are many civic society campaigns that have happened in the last year. People are not disinterested in politics; they're disinterested in the big party politics. But people care, and that leaves me hopeful.

As J.K. Rowling once said, "We do not need magic to change the world, we carry all the power we need inside ourselves already: we have the power to imagine better" - and I definitely can imagine better.

## PANEL 3: RIGHTS AND CONSTITUTIONAL CHANGE



### **CHAIR:**

Dawn Purvis (left)

### **PANELLISTS:**

Colin Harvey, QUB (centre left); Doireann Ansbro, ICCL (centre right), Senator Ian Marshall (right)

# THE GOOD FRIDAY AGREEMENT, HUMAN RIGHTS AND CONSTITUTIONAL CHANGE

Colin Harvey, Professor of Human Rights Law, Queen's University Belfast

**Colin Harvey** is Professor of Human Rights Law in the School of Law, Queen's University Belfast; a Fellow of the Senator George J Mitchell Institute for Global Peace, Security and Justice; and an Associate Fellow of the Institute of Irish Studies.



Brexit has intensified the debate about constitutional futures. Any form of Brexit splits and divides this island even further. That can be viewed as a good or a bad thing depending on your constitutional preferences. What is plain is that 'no deal' will be a disaster. There is a protective arrangement there: the Withdrawal Agreement and Irish Protocol. But these are still limited mitigating measures that are second or third best outcomes. The nature of the UK-EU future relationship raises hard questions, and spells trouble for this island. When viewed in the light of the 'remain' vote here, and the fact of impending forced removal from the EU, it is inevitable that this is promoting reflection on constitutional change, and how this island is shared in the future. Irish reunification is on the agenda for reasons that are not difficult to grasp; it would be quite remarkable if it was not.

The Good Friday Agreement anticipates constitutional change, and how it will be framed. Recall that the Agreement reflects a *constitutional compromise* that is an intrinsic part of a peace and political process that left fundamental questions deliberately open; a compromise that has the merit of overwhelming popular endorsement on this island.

The process is now arguably entering a new phase, one that will result in referendums on the constitutional future. The intention here is to draw out three themes: First, the conduct of the conversation; second, what the Agreement tells us; and third, what this means for rights in particular.

First, how should the conversation be conducted? Constitutional goals in this region are equally legitimate. It is not sectarian, tribal, dangerous, divisive or toxic to argue for a continuation of the UK or for a United Ireland. Threats of violence, intimidation, and harassment have no place in the discussion, and certainly should not prevent it taking place; peaceful and democratic means are the only way forward.

In this a few things must be underlined. Parity of esteem, mutual respect, and equal treatment are absent now. We do not live in the sort of rights-based society envisaged by the Agreement and international human rights obligations. We must look to the future, but should also confront our present failings. A willingness to face, acknowledge and deal with those will make the coming conversation easier for everyone. Our present state and our future constitutional goals are inextricably linked.

These referendums will present a decisive 'stress test' for the Agreement. Many in this society want to know if its constitutional promises are real or not. This island will be a healthier place for having had the conversation. It will represent a defining challenge: can deep constitutional questions be addressed maturely in a way that demonstrates that the values of the Agreement are embedded? If so, this must be about evidence, facts, clarity, and reasonable certainty about outcomes *either way*. Unionism, for example, cannot sit on the side lines as nationalism builds its case for reunification. It will require framing, structure, planning and preparation and must include civil society, both governments, the EU and other international institutions, as well as international friends and partners. Such a significant constitutional enterprise



cannot be left to the Secretary of State for NI. Brexit means, for example, that the EU must be involved; propositions around unity include effective return to the EU. That raises intriguing questions for Ireland and the EU. Second, what does the Agreement have to tell us? We know that constitutional status rests on ongoing consent. This is reflected in international law and in domestic law in both states.

There has also been notable EU and international endorsement for the Agreement in *all its parts*. The formula is there for the exercise of the right to self-determination by the people on the island. Both governments will respect the legitimacy of the choice, and if people opt for a united Ireland there is a binding obligation on both governments to take forward the necessary legislation. In framing this, values in the Agreement matter: partnership; equality; mutual respect; reconciliation; tolerance; mutual trust; and the protection and vindication of the human rights of all. It must be peaceful and democratic means only, and all anchored in the acceptance of the equality of political aspirations. The 'rigorous impartiality' obligation (so poorly observed by successive British governments) transfers to the Irish government in the event of reunification. The birth right guarantee (to identify and be accepted as British, Irish or both) will continue. The nature of the equivalence doctrine in the Agreement should be noted. It creates a helpful incentive to maximise change now as a way of leveraging this into future discussions. Those thinking of the future would be wise, for example, to dust off their copies of the Bill of Rights advice from the Northern Ireland Human Rights Commission (NIHRC).

The question of institutional continuity, and other matters, will also be informed by the nature and outcome of the constitutional conversation, and the agreed content of any new British-Irish agreement or agreements that will emerge. There may be varying views, for example, on the question of the NI Assembly in any new arrangements. It should not be assumed that participants will automatically want to see this continue in its current form. However, respect for the values and normative commitments of the Agreement, plus the existing international human rights obligations of both states, must inform and shape the discussion.

Third, what does this mean for rights in particular? One of the reasons we are in the present mess is that the rights-based approach in the Agreement has not been realised. There is no bill of rights, no charter of rights for the island, NIHRC is under financial strain, equality and social justice gains have not been made, threats to the Human Rights Act 1998 continue, and there is the matter of Brexit. The nature of the proposed future UK relationship with the EU is becoming disturbingly plain: a small state deregulated danger zone for socio-economic rights, with Brexit itself striking at the heart of the values underpinning the peace process.

Human rights must feature in the constitutional change conversation in a contextually meaningful way. Not as a distant future aspiration, but now. Recall again the implications of 'equivalence', and the chance still of leveraging progressive change now that will shape the future of this island.

Not everyone is overly keen on the strong and inclusive protection of human rights. There will be those who are content with continuity new Ireland. A basic 'sovereignty switch', accompanied by minimal reform to meet the basic requirements of the Agreement. Others will want a transformative conversation. Human rights and equality advocates will, hopefully, be the transformers in the room, and that raises questions about how to engage effectively with this debate now. It is vital that civil society does not run away from this constitutional conversation, especially if people mean what they say about the Agreement. It is time to embrace the Agreement again, welcome the constitutional conversation prompted by Brexit, and bring human rights to the heart of it. We need a culture of respect for human rights now *and* in the future, and this must be as life changing as people rightly expect. Especially for those on this island who need our promises to matter, and who cannot wait any longer for societal change.



# CHANGE IN THE SOUTH

Doireann Ansbro, Senior Research and Policy Officer, the Irish Council For Civil Liberties (ICCL)

**Doireann Ansbro** is the Senior Research and Policy Officer at the Irish Council for Civil Liberties. She is a human rights lawyer, called to the Bar of Ireland and to the Bar of England and Wales, who has worked for NGOs, the UN, and the Irish Government, as well as a self-employed consultant and barrister. She has an LLM in Human Rights Law, LLB (Graduate), and a BA in English and History.



## INTRODUCTION

I am delighted to be here on behalf of the Irish Council for Civil Liberties (ICCL), which is co-sponsoring today's conference. There is a long history of cooperation between the Committee on the Administration of Justice (CAJ) and ICCL. We have worked together at critical moments before, including hosting joint conferences on human rights and the peace agreement in 1994 and making joint submissions to the Forum on Peace and Reconciliation in 1995. There is, however, a need to renew a North/South relationship in the civil society space given the uncertain times we are in. And we are beginning. For example, in the last few weeks CAJ and ICCL sent joint letters to the Garda Commissioner, the Policing Authority and the Minister of Justice and Equality about reports of increased checks on buses crossing the border and alleged racial profiling by Gardaí.

I have been asked to speak about change in the South – in particular what changes to the constitutional and rights framework would be needed in the South if North and South were to unify following a border poll.

This requires looking towards the intermediate future. So for the purposes of this presentation I ask you to join me in a bit of time travel into the future. I'll speak first to the potential process of constitutional change including the use of 'deliberate democracy' and then to the potential substance of constitutional change, including minority rights and equality; better incorporation of regional and international human rights treaties into the constitutional framework; better protections for socio-economic rights; a transitional justice approach and Garda reform; and environmental and other rights.

## NEED FOR CONSTITUTIONAL CHANGE

Article 3 of the current Irish Constitution provides that it is "the firm will of the Irish Nation, in harmony and friendship, to unite all the people who share the territory of the island of Ireland, in all the diversity of their identities and traditions."

In one respect, Article 3 could be considered a sunset clause because should both the North and South vote in a border poll for the reunification of Ireland, there will need to be radical constitutional change to protect the institutional governance structures, traditions and particular rights promised by the Good Friday Agreement (GFA). The GFA is an international treaty and under international law it would have to form part of the new constitutional framework of a New Ireland (that is unless it was revoked by the two signatory governments, which is permissible only in exceptional circumstances under international law and is therefore an unlikely eventuality). This is clear from the Vienna Convention on the Law of Treaties. Therefore, the Irish Constitution would have to be either significantly amended or a brand-new constitution will need to be written.

Choosing from the various possibilities for new governance structures and constitutional frameworks in a new Ireland requires significant reflection and debate. A [new working group](#) in the Constitutional Unit of UCL has recently been set up to consider such questions, but it would be virtually impossible to have all of the answers worked out with democratic buy-in before a border poll if that vote happens in the near future. This raises the possibility that there may need to be two votes: one on unity itself and one on the model of unity. Putting the details of a new constitutional order to a second vote would go towards ensuring substantial confidence in, clarity around and legitimacy underpinning the governance structures of a united Ireland.

If nothing else the Brexit vote has taught us that we should have a detailed vision before a decision with such an unclear and yet monumental impact is made. Imagine if before the referendum on Brexit a detailed vision of the future relationship was put to the people so they knew what precise relationship they were voting for. Or, following the first vote, before triggering Article 50, imagine if there had been a long period of inclusive reflection and consultation to allow for the details of the withdrawal to be hammered out. Once that had been done, there could have been a second referendum on the precise terms of withdrawal without the time pressure pulling the article 50 trigger created. Suffice to say it is unlikely we would be in the precarious situation we are all in now.

### **CHANGE BY PEACEFUL AND LEGITIMATE MEANS**

The GFA in Strand 3, speaks to the “right to seek constitutional change by peaceful and legitimate means”. How to ensure Constitutional change by legitimate means is something that may need to be teased out.

One approach may be the approach of ‘deliberate democracy’, where citizens are directly engaged in the process of change. In the South, we have had some successful examples of deliberate democracy. The Constitutional Convention set up in 2012 and the Citizens Assembly set up in 2016 had a significant impact on both the holding of, and arguably the outcome of, subsequent referendums, not least the referendum that provided for same sex marriage in 2015 and on the removal of the 8<sup>th</sup> amendment to the Constitution, which prevented lawful abortion, in 2018.

Both the Constitutional Convention and the Citizens Assembly contributed significantly to creating the space for generally mature, informed, and reflective debates across the country, both publicly and privately, before the referendums.

The significance of this approach to constitutional change was summed up excellently by Ms. Justice Mary Laffoy, who chaired the Citizens Assembly, when presenting the report on the 8<sup>th</sup> amendment to the Oireachtas:

“The Assembly is an exercise in deliberative democracy which is based not on a competition between conflicting interests, but on an exchange of information and justifications. The model of deliberative democracy shifts the emphasis from the outcome of the decision to the quality of the process.

“Therefore, the importance of structuring a discussion on the Eighth Amendment, one of the most complex and divisive subjects in public life in Ireland, in a manner which was balanced, fair and above all informative and evidence based, became my guiding principle.”

So the approach of ‘deliberate democracy’ may be an appropriate way forward for debating the form of a New Ireland, which no doubt will become one of the “most complex and divisive subjects in public life in Ireland” the closer we get to a border poll.

## **THE PROTECTION OF RIGHTS AND CONSTITUTIONAL CHANGE**

So what would a new constitutional arrangement look like? Other speakers will be addressing what rights would be required to be protected under the GFA and what guarantees unionists would need in a united Ireland. Both focus on what will be necessary. I'd like to focus on what would be possible. In other words, what opportunities for the whole island could a new constitutional order provide? In my view, the process of radically changing or drafting a new constitution would create a chance for the new Ireland to become a global leader on modern constitutional rights protections.

Over the past decade, Ireland has made significant advances in the protection of human rights. Marriage equality and repeal of our constitutional ban on abortion were defining moments which, despite the many issues still to be tackled, demonstrate a progressive trajectory for Irish social policy. Ireland has also begun to address the legacy of historical human rights violations in religious institutions. It's fair to say there has been a seismic shift in the balance of cultural power away from the Catholic Church.

This trend opens up a road away from the principles of Catholic social teaching that underpin the 1937 Constitution, not least in the preamble, in a way that may not have been the case thirty years ago. In a new constitution, these principles could instead be replaced by the principles of the Good Friday Agreement- parity of esteem, rigorous equality and change by peaceful and legitimate means.

## **RIGHTS FOR MINORITIES**

The unionist tradition will have to be acknowledged specifically to ensure a sense of belonging and to engender confidence that their identity, culture, and political representation will be respected and protected.

But changes emphasising equality and parity of esteem don't need to be limited to the two traditions addressed in the GFA. A new constitution would provide the opportunity to create forward thinking and robust protections for all identities and traditions of the residents of Ireland. We have an increasingly diverse population and we currently have inadequate protections in the law for protecting minorities, in particular those who experience hate crime.

The need for stronger protections for minorities in Ireland includes not just newcomers but communities that we have always lived side by side with- the traveller community in particular – who despite having been recognised as a distinct ethnic group two years ago continues to suffer discrimination, lower standards of living and shorter life spans than others in Ireland.

So better protections for minorities in a new constitution will have benefits across Irish society.

## **BETTER INCORPORATION OF REGIONAL AND INTERNATIONAL RIGHTS**

A new constitutional order would also offer the opportunity to provide for a more direct incorporation of the European Convention on Human Rights (ECHR), the European Union Charter of Fundamental Rights (EU Charter), and all of the international human rights treaties that Ireland has ratified.

Currently, the reliance on the ECHR by the Irish courts in general is minimal. This may be partly because the ECHR Act 2003 does not provide for direct incorporation of ECHR rights, but rather provides for indirect effect through the narrow lens of the statute. For example, where a Declaration of Incompatibility is made by the Courts, meaning a law is not compliant with the ECHR, the only consequence for the government legally is that the Taoiseach must tell the Dáil within 21 days that the Declaration has been made (though the applicant can apply for compensation under the ECHR Act 2003 when a Declaration of Incompatibility is made). The weakness of this provision is demonstrated by the fact that it took the Irish Government 9 years following a Declaration of Incompatibility in 2006 relating to transgender rights to remedy the

situation by passing the Gender Recognition Act 2015. And this was only because of sustained campaigning by civil society and one [extraordinary individual](#).

There is also no requirement in Ireland, unlike in the UK, for certification of compliance with ECHR for new legislation. In fact, pre legislative scrutiny of new legislation in general in the Irish Constitution is weak and could be developed further in a new constitutional framework.

Rights protections provided in the EU Charter and its developing jurisprudence in Luxembourg could be reflected in a new constitution, not least the inclusion of strong data protection rights.

A new constitution could include the range of rights contained within the international treaties that Ireland has ratified, from the extensive children's rights contained in the UN Convention on the Rights of the Child to the rights protected in the UN Convention on the Elimination of Racial Discrimination. But it will also potentially need to enshrine the rights in the treaties that the UK has ratified to ensure equivalence of rights for British and Irish citizens in the new Ireland. An example of that gap is the ongoing failure of the Irish Government to ratify the Optional Protocol to the Convention against Torture (OPCAT), which provides for independent inspections of places of detention by the OPCAT Sub Committee. This treaty has been ratified by the UK.

Equally, the UK may need to ensure it has ratified the same human rights treaties as Ireland. A glaring omission currently is the UK's failure to ratify the Optional Protocol to the International Covenant on Civil and Political Rights, which has been ratified by Ireland. This protocol allows for individual complaints to be taken to the UN Human Rights Committee and can have a significant role in highlighting particular human rights abuses. Many would say that a number of such complaints and findings against the Irish Government played a key role in spurring the Irish Government to hold the referendum on the 8<sup>th</sup> Amendment in 2018.

## **SOCIO-ECONOMIC RIGHTS**

At a very basic level, a new constitutional framework would provide an opportunity to update the existing constitution with rights that have already been 'read into' it by the Irish Courts. This is the doctrine of unenumerated rights which began with the recognition of a right to bodily integrity and, during a period of judicial activism, saw a range of new rights read into the Irish Constitution including the right to earn a livelihood and the right to privacy. In more recent times, the Irish Courts have shown a reluctance to read new rights into the Constitution, disappointing many who hoped that the doctrine might allow for the protection of a broader range of economic and social rights, such as housing, health and education.

Instead, we currently have the doctrine of directive principles of social policy in Article 45 of the Constitution, which in general the courts have found are not justiciable and are merely directions to the legislature and executive. This means individuals cannot take the government to court for failing to vindicate these rights. This approach is in marked contrast to Ireland's obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR), and to a developing recognition that civil and political rights are rarely meaningful without recognising the social, economic and cultural rights that are often intertwined.

Take the right to political participation for example. This is a political right protected by the GFA, the Irish Constitution, and the ICCPR. Without the social right to access quality education, the right to political participation is arguably weakened, in particular in post conflict societies. Civil education can empower individuals to understand their political system and their role within it. Learning about history can play a key role in assisting with understanding both the historic grievances that have led to modern political divisions and the shared historical moments and events that might help straddle such divides.

Without good health and shelter, it's difficult to participate in society at all, let alone exercise the rights to political participation, freedom of expression, assembly and association. Health and housing have been considered to stray into the area of resource allocation and, as such, have been neglected by the courts (with the exception of extreme cases of mistreatment or clear discrimination by a public body). To ensure real equality and progressive realization of such rights in society, socio-economic rights need clear constitutional protections.

Equality provisions contained in the GFA, the current Irish Constitution and across all human rights treaties require equal treatment of all citizens. Leaving aside the clear divisions in access to a minimum standard of socio-economic rights on a class basis both North and South of the border in clear contravention of ICESCR, the protection of equivalence of rights between British and Irish citizens under the GFA requires substantial change in the South. These changes would need to be in place before unification.

For example, the health system in the South is in dire need of reform. We currently have a two-tier system – private and public- with waiting lists of up to two years to be seen in the public system for certain medical issues. Individuals with private insurance can access better medical facilities faster. Northern citizens used to the NHS couldn't be asked to suffer a diminution of health rights, which would mean the South would have to upscale its health system. This is true for housing too. The crisis of housing in the South is real and worsening. We have more homeless families living in emergency accommodation than ever before and the numbers are still increasing. Three bills in the last two years have been put before the Oireachtas to introduce a right to housing into the current Constitution but all three have been rejected. There is a head in the sand approach that a new constitutional order just might shake out.

## **TRANSITIONAL JUSTICE AND ACCOUNTABILITY**

Ireland is beginning a reckoning with its atrocious history of institutional abuse. Civil society has recently adopted an approach of transitional justice to campaign for the vindication of rights in this area. The rights to truth, justice, reparations and guarantees of non-recurrence are vital if we are to properly address and close these dark chapters of our history. The transitional justice approach to past wrongs in this context may be an area we can learn about from our colleagues in the North, as well as renewing a shared commitment with them to ensuring mechanisms are in place to contribute to finding the truth and ensuring accountability for other past wrongs North and South of the border. An example of including a transitional mechanism in a new constitution can be found in the [draft Libyan constitution](#). Such an approach would demonstrate commitment to the concept that dealing with the past allows for true new beginnings.

When addressing issues of accountability, it would be remiss not to mention the urgent need for reform of An Garda Síochána following years of revelations of corruption and scandal, which numerous tribunals and subsequent recommendations were unable to address. The Commission on the Future of Policing last December outlined a new and comprehensive set of recommendations for reform with an emphasis on a human rights based approach, a meaningful code of ethics, and better oversight structures.

Key areas for reform can draw on lessons learned in the formation of the PSNI including a changed approach to discipline, accountability and the policing of protest. Last December a housing protest at an eviction in North Frederick Street in Dublin saw a highly controversial police response that included the use of - what many agreed was - disproportionate force in the use of pepper spray and batons while wearing balaclavas. The policing of protest in the South needs to mirror the positive progress made in the North.

An emphasis on accountability in a new Constitution could mirror Strasbourg jurisprudence around article 2 of ECHR requiring in depth, independent, public investigations where state actors have been involved in loss of life or serious mistreatment of individuals.

## ENVIRONMENTAL AND OTHER RIGHTS

The use of masked private security agents during the policing of the protest in North Frederick Street was also concerning. Issues relating to business and human rights are creeping up the agenda both North and South of the border and the work on business and human rights done at the UN level could perhaps be reflected in a new constitution.

The challenges faced by the Save our Sperrins campaign in Tyrone against the Canadian mining company, Dalradian, has much in common with the serious issues faced by protesters against Shell in County Mayo. The unavoidable conflict between short term economic interests and long-term environmental rights is a frontier that all civil society actors should be cognisant of in the age of impending climate catastrophe. A new constitution could include robust environmental rights.

In fact, the Irish High Court in 2017 read an implied right to the protection of the environment into the current constitution, but it was not part of the main judgment and has not yet been successfully relied upon for vindication through the Courts. The right to environmental health and protection in the Good Friday Agreement could [underpin momentum](#) to include a right to a clean, healthy, and biodiverse environment in a new constitution.

As mentioned above, broader protections for data rights could also be included in a new constitution. The right to privacy is under severe threat from new surveillance technologies, data gathering online by social media and other companies, and government policies such as the controversial roll out of a national public service card in Ireland. ICCL has long been [campaigning](#) against the card on the basis that it breaches the right to privacy.

This is a non-exhaustive list but a reflection on some key rights that could be considered in discussions on the content of a new constitution for a united Ireland.

## CONCLUSION

It is clear that there will need to be a new constitutional framework for a new Ireland if the two jurisdictions are to unify. Specific rights protections for the unionist population will need to be embedded in a new or radically reformed constitution. Such protections will benefit the population as a whole. The opportunity to draft a progressive, radical new constitution offers countless ways in which rights protections across a range of areas could be strengthened.

Given the huge challenges facing us into the future, actors in the South can only benefit from the strong tradition of human rights activism in the North. Creating a critical mass of activism to meet the challenges of populism, privacy, social and economic rights, environmental challenges and law and order policies will enhance our impact both at home and abroad. And this could set Ireland up as a global leader in addressing the pressing issues of the 21<sup>st</sup> century.

Seamus Heaney's [line about history and hope rhyming](#) when justice is done is often quoted in these forums. If the poets will forgive me, I would like to paraphrase in that I think the future and hope can rhyme when human rights are protected, which is why it is so vital that we are having this conversation in these turbulent times. I want to thank CAJ in particular for all the work they have done and are doing to facilitate this conversation and to promote ongoing dialogue between all of us in here, and, perhaps just as importantly to ensure that the rhyme doesn't become an echo, to everyone out there. We need to take seriously our role as human rights advocates not just to discuss human rights among ourselves but to explain them to society at large and, in that way, embed them for future generations.



# GUARANTEES FOR UNIONISTS IN A UNITED IRELAND

Ian Marshall, Senator, Seanad Éireann

**Ian Marshall** is a former farmer and independent unionist politician from Markethill, County Armagh, in Northern Ireland. He campaigned against Brexit and was an elected Senator in the Seanad Éireann in Dublin from 2018 to 2020. He currently works for the Institute for Global Food Security, which is based at Queen's University Belfast.



As a former dairy farmer, I work in QUB [Queen's University Belfast] on Stranmillis Road in a university where there are 23,000 students; I think 22,900 of them drive cars. So to park in Stranmillis, you have to leave very early in the morning, and I am usually parked up beside the Ulster Museum around 7am. As I was travelling down the road this morning, I was disappointed and dismayed listening to a story that was being covered on the BBC, and it was actually about freshers week in QUB and was about some of the stalls and stands that were presented in fresher's week. I was really dismayed and disappointed to learn that one particular political party had signage that said: "Brits Out". I thought, well that's disappointing, and then when I heard the full story, I realised there is another political party with a sign stating, "Ulster is British", and I thought, well that's equally as disappointing. However, as I got closer to Belfast, I started to think the really disappointing thing about all of this is that it happened at a university, and there is something fundamentally wrong if we have that sort of divisiveness in a university, but that issue's for another time!

I probably have a slightly different perspective on this conversation today, with my remit being to talk about 'guarantees for unionists in a united Ireland'. If we consider the human rights of people, and if we cast our minds back 100 years, and we consider the partition of Ireland; for those people who are supporters and proponents of Irish unity, and would fundamentally disagree with the partition of Ireland in 1921, then I would contend with those people that you must agree that the forced unification of an island is equally as wrong. Unification must happen when it is the agreement of everybody that it is the right thing to do.

Anyone who knows me knows that I always refer to my favourite book, which is *To Kill a Mockingbird*. I always refer to the Atticus Finch line: "You never really understand a person until you consider things from his point of view... until you climb into his skin and walk around in it" – I think this is a very important point in the Northern Irish context. I am a unionist, I was elected to the Irish Seanad eighteen months ago, and every time I am introduced to parliamentarians in Dublin as an Ulster unionist Senator, they say:

"Ah, you're a Brexiteer?" – No, I'm not.

"Ah, you're anti-LGBT rights?" – No, I'm not.

"You're anti-same-sex marriage?" – No.

"You're anti women's rights?" – No.

Often, the perception of me as an Ulster unionist is what people see through ten unionist MPs in London.

When I met American congressmen and women last week and again was introduced as an Ulster unionist senator, it was interesting to learn that they regard some of our unionist politicians in Northern Ireland in

the same vein as white supremacists in North America, and “the Klan” was mentioned in conversation, which is a frightening concept, and very far from the reality.

If we refer back to the Good Friday Agreement, and I agree that what is written in that agreement is that you only need a consensus of 50+1 to start this process, then I have no issue with that, because that is what’s in the agreement. However, I think you need to be very careful because in a 50+1 scenario, the very next day after a referendum you have 49% of people who are very aggrieved, and who will ultimately feel they’ve lost.

We need to learn from Brexit because there needs to be a plan of what you do with the 49% on the first day – there needs to be some sort of strategic plan for this. Even though it is in the Good Friday Agreement, I don’t think it’s enough to say, in the absence of a plan, “Yes, let’s drive the conversation”. We need to move much farther than that; If we don’t I think it could create many more problems than it resolves. The truth is, if we move on this too fast, and I’m not saying we don’t move on it, but if we move on it without taking everyone with us, and we create a group of people in Northern Ireland who feel left behind and disadvantaged, if we rewrite history, we create the same set of problems we shaped the last time, because we would be doing to another community what we did to one community 50 years ago, and that is simply wrong.

So, we need to learn from Brexit. We can’t ask a binary question for a very complex conundrum, we’ve got to give people the time and space to have the conversation.

Last month was Féile an Phobail in West Belfast. I participated, as did many others who are engaged in politics and civic conversations in Northern Ireland. It’s a fantastic festival of culture, and music, and literature. It was a huge privilege to be there. However, there was a leaders’ debate in which Leo Varadkar participated, and he made a very important comment that evening, because what he said was that this idea of a new Ireland would be about a different constitution, it would be a new entity, a different place entirely.

It was obvious that there were a few people in the room who sat up and said, “What? Hold on; we’re not that comfortable with that idea”. The reality is, for many people, this new Ireland is about adding six counties on to 26, about ‘tagging on’ Northern Ireland to the Republic.

What was also interesting was where I sit in the Seanad, the row of seats behind me are the Sinn Féin Senators. After the Féile we were chatting and I said to them, “You know, Leo Varadkar’s comments were quite interesting about a new Ireland, a new entity, and really taking a radical look at all of this.

Because we’ve got a fantastic building at Stormont in Belfast, in Parliament Buildings, I think it would be great if there was this ‘new Ireland’ maybe we would have the seat of government at Stormont, where we’ve already got a Senate chamber too; it all makes sense”.

An obvious look of horror came over their faces, that they would never ever consider such a thing. But I said, “Be careful what you wish for, because it could be part of the conversation”.

Furthermore, when I was elected to the Seanad, I had to meet all the political leaders – all the TDs and all the Senators in Dublin. And the last person I had to meet was actually a very senior republican party leader. We had a one-on-one for about an hour, and at one point of the conversation, I said, “You know, I could possibly subscribe to Irish unity”.

To which the reply came, “Could you? An Ulster unionist? You think it would be alright?”

To which I stated, tongue in cheek “yes, a unified 32 counties, run from London, makes perfect sense”.

A cry of laughter was the retort, and the claim that this would never ever be considered, and I’ll not repeat the words they used to describe the suggestion!

It was light-hearted, and in jest, but there is a serious side to it, because what I said to them was that the horror that filled them with, and the emotion that it raised in their heart; the conviction that such a thing will never happen, is critically important.

Irish unity conversations for many unionists in Northern Ireland trigger exactly the same feeling of resentment and the position that “that could never happen, because we’ve lived through fifty horrible years of trouble and conflict, too much damage done, and hurt, and history”, and the offering represented held “no place for them”.

Furthermore, there was a very senior politician in the Féile who made a comment one evening, saying the train on Irish unity “has left the station”. He’s right; the train has left the station and the conversation has begun. But the reality is, at this moment in time, we don’t really know whether it is destination unity or destination Union. If that train leaves the station with only one destination, which is unity, the first thing is that no unionist would buy a ticket to board.

Why would they?

So I think it is important to make the point that this conversation at the moment needs to be broad and open. The language of Irish unity and a united Ireland, for many unionists, in itself is a problem because they fought for their lives against a united Ireland, all through the dark days of the troubles. So, the language is critically important.

Back to the Atticus Finch comments, because as a unionist, I don’t think unionism has got people to understand what it really represents or stands for. In my experience, and I am certainly misunderstood, I know many unionists are much more liberal and open-minded than we’re very often portrayed. For republicanism, I think they have a similar problem because I don’t think they have been particularly good at telling people what a republican is. For a unionist community, an Irish republican in Northern Ireland has been anti-Brit, anti-prod, anti-union. An Irish republican is associated with a balaclava and an Armalite, and we need to do something about that. When I go to Leinster House, when I sit in the Seanad, I have lots of friends who are Irish republicans, across many parties, and they present no threat to me, my family, my culture, or my identity. It is all about how we perceive and understand the ‘other side’ to be.

Mutual respect and parity of esteem as defined by the Good Friday Agreement is a must be for everyone. There was a reference made earlier about ownership of that by one side or the other; it must be for everyone.

If we look at the current Northern Ireland electorate, based on the complexity of that, we see figures that are emerging about the difference of opinion of young and old, between unionists and nationalists, between loyalists and republicans, between voters and non-voters, between Brexiteers and Remainers – so it’s a very complicated landscape at the moment. No longer can we make the assumption or take for granted that Irish unity or the continuation of the United Kingdom is a *fait accompli*; we don’t know at the moment.

We need to have the conversation. However, we must not have the conversation with a closed mind or predetermined end games. I was told a long time ago that the human mind works like a parachute working best when it's open. So, we must have an open mind and an open conversation about this.

The question I was asked was 'are there guarantees for unionists in a united Ireland? What do we need to guarantee for unionists?'

Firstly, I believe that an assurance that the conversation regarding unity should run in parallel with the conversation about the arrangement within the Union. That could be a starting point, because I would contend with you this afternoon, that this is a bit like asking turkeys to plan Christmas dinner. Why on earth would they? Why would unionists, at the minute, engage in an Irish unity conversation when they can't see their place in it, they can't see what would benefit them, and they can't see what is in it for them. I think that's an important point to make. There is no template.

Secondly, we need to have the debate, and it's good, it's healthy, and I think we've moved on. We've done 21 years since the signing of the Good Friday Agreement; I think we're ready for this conversation, I think it makes sense. Civic unionism and civic nationalism must have this debate, and they definitely have a role to play, but this needs to be done in conjunction with the academics, with the economists, with the business people, with the financiers, and with the political representation. In fact, this conversation should give our elected representatives a mandate to deliver; and be under no illusion, the people are ahead of the politicians on this one.

Thirdly, as I referred to earlier, this is not a conversation about the absorption of Northern Ireland into Ireland. It is about a completely new entity, which is important because this flags up other questions:

- What guarantees would the 26 counties in Ireland want?
- Would they want unification?
- Do they know what it would look like?
- Are they given the information to make informed decisions?

My experience in Dublin at the moment, is actually that many TDs and senators from lots of counties in Ireland see the North as a bit toxic, a bit dangerous, they don't really understand it, and they're not sure about us.

We need to consider all these things, and consider if we've become too focused on a conversation about ideology and rhetoric instead of facts and information?

In my experience, the Senate doesn't really understand a lot of us in Northern Ireland, and many of them see us as a very complicated breed. They're quite happy to have us as neighbours, but as a group, they're not prepared to take us on with festering baggage from fifty years of troubles. Quite simply, in many of their opinions, and in many of their eyes in Dublin; Northern Ireland could disrupt a model of government that works for them at the moment. It's a model that's very successful, and arguably doesn't need the complexity of trying to integrate Northern Irish green and orange politics into it before the facts are established.

In conclusion, in my opinion, if we need guarantees, we haven't actually created the right platform truly based on mutual respect and parity of esteem.

We need a place where everyone's rights are respected, and I mean 'everyone's' rights.

A new Ireland becomes a reality when you convince everyone, including unionists, that they'll be better, healthier, richer, and happier, and an intrinsic part of an island nation, and not as an addition to, or an appendage to, the rest of the island.

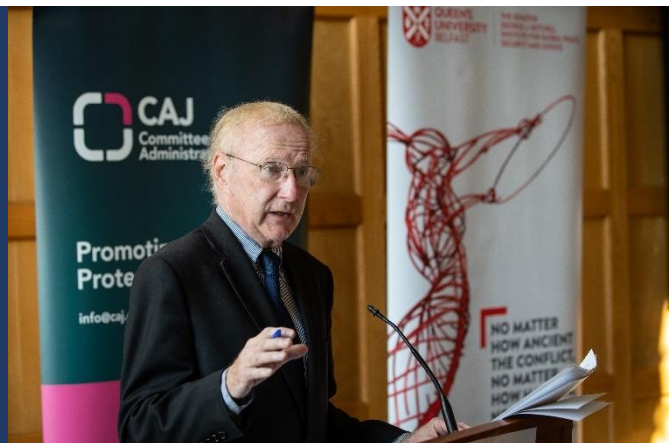
A place where everyone's lives are better, and not based on the cultural identity of British, Irish, or both.

If and when you arrive at this destination on this train, you don't need any guarantees!

## A VIEW FROM THE USA

Patrick Doherty, Director of Corporate Governance, Office of The New York State Comptroller

**Patrick Doherty** has worked within the Office of the New York State Comptroller for many years, currently holding the position of Director of Corporate Governance. He played a key role in the build-up to the Good Friday Agreement and in implementing what the MacBride Principles, a corporate code of conduct for companies doing business in Northern Ireland. Doherty, who is himself of Irish ancestry, has earned induction into the Irish America Hall of Fame.



The Office of the New York State Comptroller manages an investment fund, which is one of the largest investment funds in the United States: over \$200 billion under management, and we have a particular interest in Ireland and Northern Ireland, and we have had it for some years. We have had a long relationship with CAJ, especially concerning employment discrimination, spanning over many decades. The programme said I was going to speak on 'a view from the USA' – I don't know where to start with that, surveying the scene.

First of all, I want to give a slight disclaimer in that I'm not speaking on behalf of the [New York] State government, in terms of everything I say, although obviously my views are informed by the work that we have been doing over the years. This is my personal view. I will start by looking at the obvious analogies that people are drawing between the current situation, the relationship between the US and UK governments and that which existed 30 years ago between Margaret Thatcher and Ronald Reagan – two ideological soulmates. People are now comparing that to Donald Trump and Boris Johnson – well it brought to mind the old quote about history repeating itself "first as tragedy, then as farce". I think, obviously, we are in the second section of that analogy. I found out it was actually Karl Marx who said that originally, so, I own up to that.

In any event, our involvement in investment funds has had a long history. We have a mandate requiring that we get the corporations that we have investments in to sign up to certain values. These amount to several thousand corporations; we are heavily invested in the largest corporations in the US, in the UK, and in Europe and Asia. We are among the largest investors in most of the corporations that we do have investments in – so if it is a large corporation, because we are such a significant investor, that gives us clout with the corporations, which we have used in relation to a number of issues – not only the issues of employment discrimination, whether it be racial employment discrimination in the US, or sectarian employment discrimination here in Northern Ireland.

In terms of my personal involvement, I got out of school and I was asked to take on Northern Ireland discrimination as an office project, and we made inquiries and did research, and found that Catholics were two-and-a-half times as likely to be unemployed as Protestants here in the North at the time. We ended up having a meeting with a British government representative in a consulate in New York – I asked him why



that was the case. He said that was because the Northern Catholics lacked the Protestant work ethic. So, I had already established that my father had been born in Derry, and so it seemed quite strange. I went back to my office and said to my boss, look we're pushing an open door on this issue, it is certainly ripe for our involvement. So we worked on the issue, and helped with Dr Seán MacBride on the creation of the MacBride Principles and their implementation by the companies that we had investments in. We required those companies that were accepting investment from New York to be non-discriminatory, and not just technically following and obeying the law in Northern Ireland at the time, because we felt it was not adequate. Subsequently our program was adopted by a number of other US states and cities.

Later we were able to persuade the Thatcher government that the existing law was inadequate, and a new fair employment act was passed. Today, the employment differential between Protestants and Catholics is virtually eliminated, it is gone, and the workplace is now considered one of the most integrated parts of society here. I think that we in the United States should take some credit for that, as well as the human rights community here, and human rights communities elsewhere. We actually had support early on from political figures in the UK, in fact, very early on, in the 1980s, we met Jeremy Corbyn and John McDonald, who were extremely supportive, as were a number of politicians including Kevin McNamara from the Labour party, and helped push the legal changes forward in Westminster.

Let me back up a little bit and give you my own history: My father was born in Derry, in Londonderry – in fact when I was a little kid before the troubles it was Londonderry. Derry was used as well, but Londonderry was not considered to be problematic in our family. In fact, our family would sing “Dear old Londonderry on the banks of the Foyle”, as well as “Dear old Derry on the banks of the Foyle” – so it didn't mean that much at the time, and subsequently it became a big issue.

Now, my mother was born in New York – her father was born in Galway and her mother was from Pettigo in County Fermanagh. Now, Pettigo is one of those communities that is going to be tremendously affected by Brexit – the border literally goes down the centre of the square. I was actually there, in the middle of the square, and they were saying, “Well, there's the border right there”, and I said, “Well, I don't really see it”. It actually goes through houses – if you're born on one side of the house, you're a citizen of the Republic, if you're born on the other side of the house you're a subject of the crown. I think that cross-border economic arrangements, and in fact the elimination of the border if possible and the prevention of a hard border being put forward, is something that, economically and in terms of inward investment, is very desirable in our opinion.

There was a discussion held earlier in the conference about a possible border poll. Let me discuss the Irish-American response, which our office has endorsed, and which we have been involved in. We had an event this past year – on 10 April – commemorating the Good Friday Agreement anniversary. Let me say, in terms of the programme, that Irish-Americans have endorsed the Good Friday Agreement, which we support very strongly. We think it is a tremendous achievement, particularly for the people here who braved all sorts of tremendous threats on all sides. I have to say, over the years, I have had tremendous admiration for the personal courage of all of the people, all of the political representatives especially, on both sides, who took the risk of involving themselves in politics and putting themselves forward. I mention in particular, Inez McCormack, who was a wonderful woman, an inspiration to me and many people in the United States; someone who persevered at great risk to herself. I don't know if the subsequent generation

that rose up after the peace really realises the tremendous courage of people who were determined to assert their rights.

Let me just go down the four points, which are at the centre of the current impasse at Stormont, and what position we have taken in the United States concerning that. A Bill of Rights, we absolutely support it. The terms of the Good Friday Agreement call for the adoption of a Bill of Rights in Northern Ireland. The Good Friday Agreement was ratified by more than 70% of the voters in the North, and 94% of people in the Republic. Yet, there is still no Bill of Rights. The Northern Ireland Human Rights Commission made proposals to the UK government recommending the recognition of a broad range of social and economic rights in a Bill of Rights. Successive British governments have failed to act on these recommendations, and today, more than 20 years after the Good Friday Agreement was ratified by more than 70% of the voters here, there is still no Bill of Rights for the North.

Now, with significant opposition from within the British government to continue to accept the human rights provisions of the European Convention, a determination to scrap the Human Rights Act, and Brexit, it becomes even more important that the rights of citizens in the north be protected when it comes to critical human rights issues.

The second issue that is causing difficulty here is the status of the Irish language, and we take the position for full statutory equality for the Irish language under the terms of the St Andrews Agreement of 2006. The British government committed to an act to give the Irish language official status equal to that afforded to Scots Gaelic and Welsh languages. They failed to honour this obligation, and the Democratic Unionist Party explicitly repudiated it. Subsequent moves by the DUP to defund the study of the Irish language was a major contributing factor to the resignation of Martin McGuinness as Northern Ireland's Deputy First Minister in 2017 when he cited the DUP's lack of respect for rights and cultural traditions of the Irish nationalist community in the North. Once again, the Welsh language is accorded statutory respect and foundation in law; the Scottish language, the Welsh language, but not the Irish language.

We also take the position of equal justice for victims of the conflict and their families. Many victims of the North and their families, from both unionist and nationalist communities have waited decades to learn the full truth about what happened to them and their loved ones. Funding must be provided for proper inquests to move forward – the full story of collusion and cover-ups must be told, and those responsible for human rights abuses must be brought to justice. I can understand the pain of families on all sides.

Finally, the issue of self-determination. We take the position that there should be a referendum on Irish unity to affirm Irish self-determination under the Good Friday Agreement. The British government committed formally to recognise that the people of Ireland alone, by agreeing within two parts, respectively, and without external impediment could exercise their right of self-determination on the basis of consent. Provisions were made for border polls, referenda on Irish unity whose results would be given effect by the governmental parties to the agreement. Now the agreement went on to commit that the signatory parties, including the British government should not make any change in the status of Northern Ireland, save with the consent of the majority of its people. I emphasise here – make any change. Despite the fact that Brexit clearly represents a change in status of NI, and despite the fact that the people of the North voted by a large majority - 56% - against it, the government determined to impose this very

significant change, having potentially profound consequences for Ireland and the people of Ireland North and South, against their democratically expressed wishes. If the Good Friday Agreement's commitments to self-determination are to have any meaning, the British government must allow the Irish people the opportunity to determine their future.

And then also, just a reference here, and this is a question, and you see a lot of reference in Britain and here to the four nations of the UK – England, Scotland, Wales, and (Northern) Ireland – and they have devolution that has been put into effect, with the exception of England. This does beg the question of, if there is another referendum on EU membership, maybe that referendum should take place with some consideration for the wishes, significantly expressed in significant majorities in the various nations. Would it not make more sense to be a little more flexible here? And then you could potentially have a circumstance in which you would have the referendum go forward – England could vote to get out completely, Scotland could go the other way, and then that vote could be recognised. And then (Northern) Ireland could go another way, and that vote could be recognised. You have similar arrangements with Denmark and Greenland for example – Greenland is not a member of the EU. Denmark retains its sovereignty over Greenland, at least until Donald Trump builds his hotels! And at the same time, you have the fact that it is not a member of the EU and not subject to EU regulation.

Finally, a quick observation – people would say that this place is not ready for a border poll. One response that I have is that history happens whether you're ready or not. Events are moving forward, and I think the people have to consider adapting themselves pretty quickly because otherwise people will be left behind. An ostrich with its head in the sand position is not really reasonable. To say that we can't really discuss this, well once again, the locomotive of history is moving forward. We are in a very uncertain time, but that is why you have got to start planning and have got to start considering things.

## CLOSING SESSION: THE WAY FORWARD

Brian Gormally, Director, Committee on the Administration of Justice (CAJ)

**Brian Gormally** has been Director of CAJ from 2011 onwards. Before that, he spent more than a decade as an independent consultant, based mainly within the voluntary and community sector and specialising in justice, human rights, and equality issues. For 25 years, until 2000, he was Deputy Director of NIACRO, working with communities, alienated young people, ex-offenders, and prisoners' families. Brian has published and presented extensively on justice, community policing, and conflict resolution issues. He has been involved in international peace related work in South Africa, Israel/Palestine, the Basque Country, Italy, and, more recently, Colombia. Additionally, he has worked with the NI Human Rights Commission on the Bill of Rights and with the trade union movement on a number of projects on equality and human rights.



As an introduction, let me recap the contents and purpose of what the conference has been about. After the events of this week, we don't need to persuade anyone that we are in the middle of a many sided crisis. Each day news commentators say that we are in uncharted territory. Whatever happens, we can be absolutely sure that we are going to suffer political turbulence for the foreseeable future.

In these circumstances, it is our view that we need to find a way that we can weather the coming storms without political confrontation and violent conflict on this island. We need to look therefore at what has worked in bringing peace. Peace and human rights aren't identical, but they are inextricable. We know that violent conflict results in a bonfire of human rights, so a prime duty of human rights activists is to defend the peace. We have had a lot of discussion about the Good Friday Agreement and its imperfections. However, in one sense, the proof of the pudding is in the eating, and that shows the peace settlement arrived at in the Good Friday Agreement (and subsequent pacts and legislation) has delivered relative peace for the last two decades.

The whole idea of the peace agreement was to create a society in which people with different national aspirations and allegiances could live together in harmony. Therefore, in addition to specific guarantees that one community could not dominate the other, the agreement held out the promise of a rights based society to which everybody could give at least conditional allegiance. And that's why we're proposing a renaissance of the peace process as a core way in which we can achieve a peaceful and rights based society. We don't need to rip up the past and devise entirely new solutions for the future. The Good Friday Agreement was designed for political turbulence. It couldn't have brought relative peace otherwise. The concept of renaissance means a rebirth of the agreement principles, going back to basics and implementing what was neglected, but also adapting and developing solutions for the new challenges coming down the road.

We need to make people feel safe and secure in their identities and abilities to access protection of their rights. After the past few years, society on this island will never be the same again. Things that people thought fixed and settled have become fluid. People need practical reassurance. There is plenty of room for discussion and negotiation on the details, but in broad terms we think that a renaissance of the peace process involves three elements: first, we need to implement what was left undone; second, we need to

repair what is broken; and, third, we need to put in place new guarantees to correct the problems that the Brexit process has exposed or created, and also, to meet the potential challenge of constitutional change.

Now, that is much of what we have been talking about today, and there are no doubt further suggestions to be made. What I want to argue is that, in whatever we do, we are guided by the human rights approach that was at the heart of the agreement. Sometimes a human rights approach can be derided and dismissed as naïve, and the advantages of a realpolitik attitude applauded instead. That implies deals and horse-trading, bribes and inducements on the one hand; or a resort to brute force and repression on the other. This is the carrot and stick, zero sum approach of the real world. In fact, in our view, that approach is uniquely unsuited to divided societies where people have incompatible national aspirations and allegiances. In divided societies like NI, a zero sum approach where the only choices are supremacy or submission, leads inevitably to conflict. Where national aspiration is one of the interlocking distinguishing features that determine identity, respect, and fairness are much more negotiable currency than carrot and stick.

We are going to have to live with our divisions for the foreseeable future, but I want to say that in spite of them - or perhaps transcending them - there is a progressive majority in Northern Ireland, and indeed across the whole island. Recent elections have indicated this, and polling has consistently demonstrated it. That majority is for fairness and respect, for human dignity and human rights – that majority votes for different political parties, it may vary from issue to issue, and it must never be taken for granted. But it does exist. And our task is to put our trust in it; to encourage and nurture it, and seek to mobilise it in a renaissance of the peace process.

Well how do we do that? This is where everybody comes in and we are looking for suggestions. My own view, for what it is worth, is that we may not here be talking about an organised movement, we may be looking for something more flexible, more diverse, but with a firm background and backbone of principle. That principle then has to be an approach that in each diverse circumstance asks, “What will best increase human rights, dignity, and equality?”. When any decision has to be made, the criterion for making it should be focused on the people affected - what choice will enhance their rights and dignity? And what choice will diminish them? The answer will usually be clear, whether you’re a civil society activist, a politician, a trade unionist, a faith leader, or someone trying to run a farm or a business.

We’ve already got a full agenda of things that need to be done. Today, we have heard about a raft of outstanding human rights and equality issues. We need to make common cause in trying to tackle all of them. There is room for everyone, and a need for action at all levels of society, from the individual to the political. The greater the unity of purpose, the better. So, in my view, when we talk about a renaissance of the peace process, we mean a reaffirmation of a commitment to creating a rights based society, a society which we can all share whatever our national aspiration and allegiances. Rights, equality, peace – that is what we need.

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