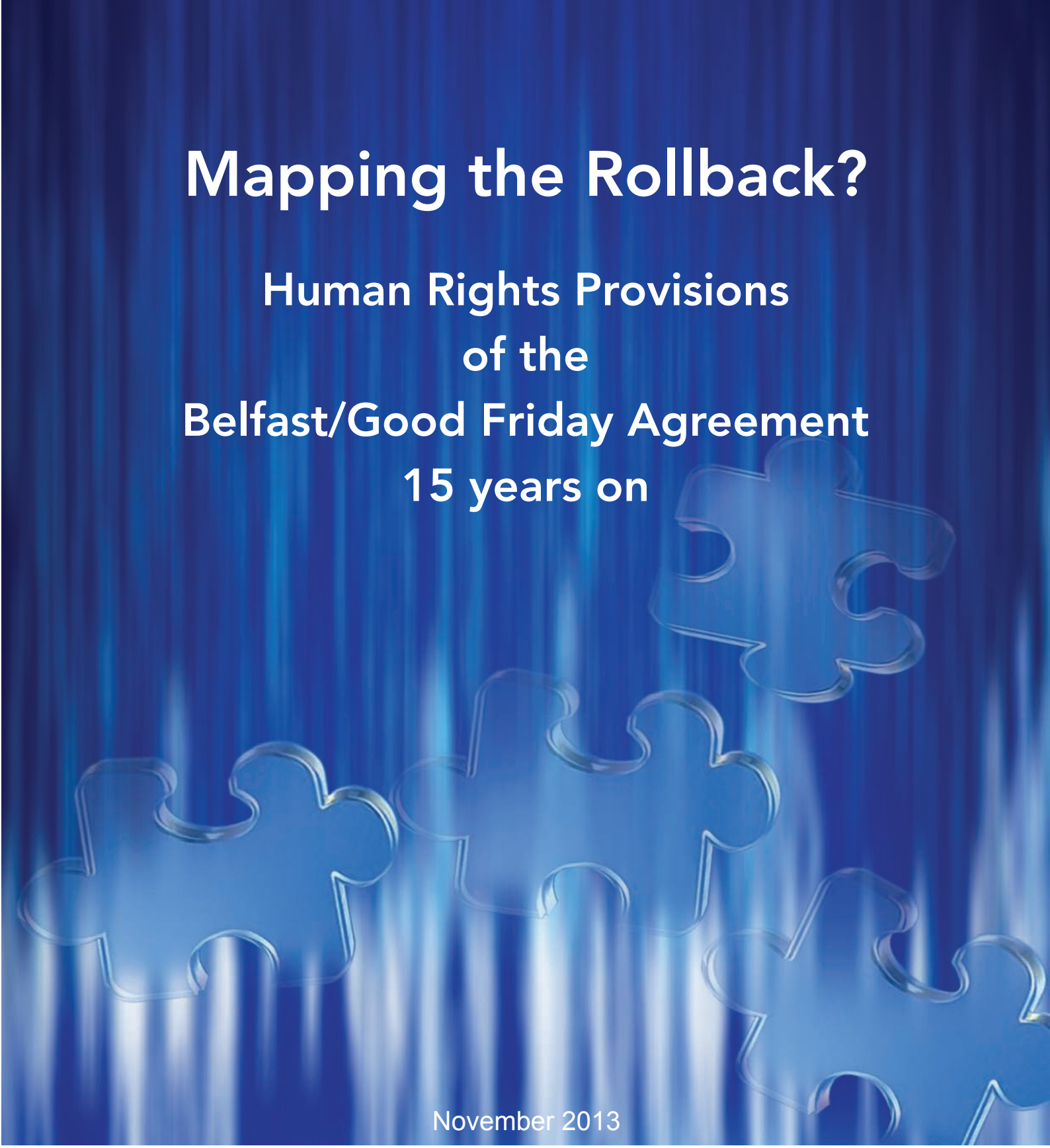
# Mapping the Rollback?

## Human Rights Provisions of the Belfast/Good Friday Agreement 15 years on



November 2013

CAJ
Committee on the Administration of Justice
Promoting Justice / Protecting Rights

Queen's University Belfast

University of Ulster
transitional justice institute

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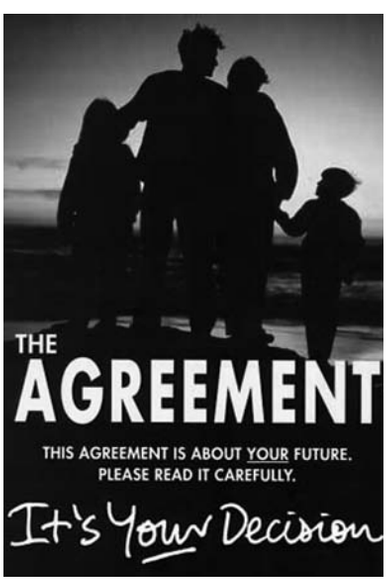
## Human Rights Provisions of the Belfast/Good Friday Agreement 15 years on

### Report of a conference held in the Great Hall, Queens University Belfast, 26 April 2013

**Organised by the Committee on the Administration of Justice (CAJ) in collaboration with the Transitional Justice Institute of the University of Ulster and the Human Rights Centre at Queen's University Belfast.**

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**What is CAJ?**

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organization affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights for Northern Ireland.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation, the Esmée Fairbairn Foundation and UNISON.

The organization has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

**What is the University of Ulster's Transitional Justice Institute**

The Transitional Justice Institute (TJI), established in 2003, has rapidly become internationally recognized as a leading centre in developing the field of transitional justice – broadly, the study of law in societies emerging from conflict. It has placed research emanating from Northern Ireland at the forefront of both local and global academic, legal and policy debates. The TJI is dedicated to examining how law and legal institutions assist (or not) the move from conflict to peace. A central assumption of the research agenda of the TJI is that the role of law in situations of transition is different from that in other times. In contrast to commonly held understandings of the law as underpinning order, stability and community, the role of law in transitional situations is a less understood role of assisting in the transition from a situation of conflict to one of 'peace' (perhaps better understood as non-violent conflict). The Institute has established authoritative analyses of rapidly developing legal controversies in Northern Ireland for the benefit of a global audience. It also brings comparative experiences and international influences into the Northern Irish debate. TJI espouses an 'active research' model, wherein engagement with institutions, policy-makers and communities (internationally and locally) generates research, and research generates engagement.

**What is the Human Rights Centre at Queen's University Belfast**

The Human Rights Centre at Queen's University Belfast was established in 1990 and for nearly a quarter of a century has acted as a means of consolidating and providing focus for the School of Law's expertise in human rights research and teaching. Its aim, which continues to be successfully achieved, is to support a community of researchers in the area of human rights law and encourage co-operation with other researchers and human rights institutions, both at the local and international levels. The Human Rights Centre is committed to providing a high-quality learning experience for its postgraduate students. Our postgraduate human rights programmes offers substantial scope for independent study and research on all aspects of human rights law and politics. The Centre regularly organises events and its website provides useful information on conferences, seminars and events.

# Contents

# Introduction

CAJ in collaboration with the Transitional Justice Institute (TJI) of the University of Ulster and the Human Rights Centre at Queen's University Belfast organised the 'Mapping the Rollback?' conference, which marked the 15th Anniversary of the Belfast/Good Friday Agreement. The conference took place in the Great Hall, Queens University Belfast on the 26 April 2013 and was attended by a full capacity audience of around 150 delegates from across civil society.

The objective of the conference, and this report, was precisely to 'map the rollback' from the human rights commitments made as part of the 1998 Belfast/Good Friday Agreement and its subsequent implementation Agreements (Weston Park Agreement 2001, Joint Declaration 2003, St Andrews Agreement 2006, Hillsborough 2010) and the various reviews and commissions (e.g. the Independent [Patten] Commission on Policing) which emerged as part of the process.

Whilst not taking a position on the 1998 Agreement *per se* (given as it dealt with the constitutional status of Northern Ireland on which we have no view) CAJ, along with others, did make substantial efforts to ensure human rights were mainstreamed into the peace settlement and Agreement itself. There was considerable success. A cursory search of the text of the Agreement showing that the words 'right' or 'rights' appears 61 times and the then UN High Commissioner for Human Rights, Mary Robinson noted "...the Good Friday Agreement is conspicuous by the centrality it gives to equality and human rights concerns." The range of subsequent international Agreements between the two sovereign governments to implement and take forward the settlement also contained a number of human rights commitments (although unfortunately no dispute resolution mechanism to assist implementation). CAJ has long pressed for enforcement to ensure that the elements of the peace settlement which do protect human rights are, and continue to be, implemented. It is important to stress that these provisions were not mere manifesto commitments by governments now out of office but rather provisions which were enshrined into bilateral (UK-Ireland) treaties and international agreements between them which are binding in international law.

At the time of the conference a significant part of official discourse on the peace settlement had veered towards an 'end of history' narrative which sought to project the idea that, following the devolution of justice and the Assembly completing a full term, the final blocks of the peace settlement had been solidly put into place and were indeed a model for the world. This official narrative was by then already being checked in the context of the flags protests, and has been further dented since by instability in power sharing and the unresolved crisis issues in the political process which have led to the current 'Panel of Parties' talks chaired by Richard Haass. Two central issues to the Haass talks, the first parading and the second flags and emblems, were ironically two issues for which a framework was to have been provided by the unimplemented Bill of Rights committed to in the 1998 Agreement.

Well before this, and in contrast to official optimism, increasing concern had been expressed by CAJ and other human rights organisations that there had been and continue to be persistent attempts at a 'rollback' by the state, or elements within its institutions, of

the human rights provisions of the Agreements. This includes commitments made as part of the settlement which have never been implemented and areas where institutional and policy gains were made which are now being undermined.

This encompasses unimplemented commitments to legislate for a Bill of Rights and Irish Language Act, introduce an anti-poverty strategy, the lack of full implementation of the statutory equality duties, and commitments to repeal emergency law. There is even the current threat to the European Convention on Human Rights which the 1998 Agreement guaranteed the incorporation of into Northern Ireland law. Some commitments like the 'right of women to full and equal political participation' and to supporting young people from areas affected by the conflict have never had a delivery mechanism to take them forward. There has been regression in commitments to victims services, a drift away from commitments to tackle inequality on the basis of objective need, and to remove employment barriers for ex-prisoners. There was also the slow pace of some justice reform and the undermining of the independence of key peace settlement institutions such as occurred during the tenure of the second Police Ombudsman. Policing also has seen regression from the Patten blueprint - most notably in the 2007 transfer of the most controversial area of policing ('national security' covert policing) away from the PSNI and all the post-Patten oversight bodies to the Security Service MI5. There is also the fate of the Irish governments institutional and reform commitments under the Agreements.

There were some areas of human right related policy which were not dealt with by the Agreements, including a transitional justice mechanism to 'deal with the past' (and notably one prominent related commitment in the Agreements - to hold a public inquiry into the death of human rights lawyer – Pat Finucane has been reneged on). Nevertheless the Agreements did provide a significant number of human rights frameworks and commitments designed specifically to address the problems of the conflict. Notwithstanding the progress of the peace process to date, the conference aimed therefore to discuss and map an alternative view to prevalent official discourse at the time that matters were largely concluded. Namely, that there is still plenty unfinished business in relation to the human rights commitments made as part of the settlement designed to address long standing problems which will continue to manifest themselves if not dealt with.

Colin Harvey of Queens University chaired the opening session in which Professor Monica McWilliams (TJI) provided reflections of a participant in the peace negotiations and CAJ Deputy Director Daniel Holder presented CAJ's 'Mapping the Rollback' paper, an updated version of which is included in this report.

This was followed by a panel discussion on 'Human rights and equality commitments 15 years on' featuring the following speakers**:** Maggie Beirne, former Director CAJ; Michael Farrell, Free Legal Advice Centres; Patricia McKeown UNISON and chaired by Director CAJ, Brian Gormally.

The third plenary session was a panel discussion "Policing, justice and community 15 years on" featuring the following speakers**:** former chair of CAJ Mary O'Rawe, Fiona McCausland community activist, Neil Jarman Institute of Conflict Research (ICR) and chaired by Professor Brice Dickson, QUB Human Rights Centre.

Following the morning plenary four specialist sessions were held on the subjects of Protection of Rights Frameworks fifteen years on, Equality fifteen years on, Policing, Security and Justice Reform and Dealing with the Past.

This report contains the available papers and speeches from the above and we hope both 'maps' and provides a platform to challenge the rollback.

## Acknowledgements

A huge thank you to UU's Transitional Justice Institute and QUB Human Rights Centre for partnering us and providing financial support for the conference and to their respective heads Professor Bill Rolston and Professor Jean Allain for facilitating this. A huge thank you to Deaglan Coyle and Dr Sylvie Langlaude at QUB without whom we would not have venue, catering and all other logistics organized for the day to be commended on their efficiency and support for making it so easy to organize from our end with QUB.

Thanks to all the speakers and session chairs who gave their time free to be part of the conference and admirably facilitated the task of 'mapping the rollback'.

Thanks to all the staff at CAJ, without whose unconditional commitment, the conference would not have happened, particularly Adrienne Reilly and Donal Lyons who worked tirelessly to organise the event and to our key volunteers who are good friends of CAJ: Ivanka Antova, Sarah Ellis, Kevin Hearty, Fiona Cash, Liz McAleer, Donal Kearney and Elizabeth Super without whom the follow up report and running order of the day would not have been possible. Thanks to Stan Nikolov for his excellent photography of the event.

CAJ thanks UNISON, TJI and the QUB Human Rights Centre for their financial support for the publication of this report. This report was launched in the UU Belfast Campus on the eve of UN Human Rights Day 2013 (10 December).

## Conference Programme

**Opening Plenary 9.30-10.30**
Professor Colin Harvey, QUB Human Rights Centre
Reflections of a Participant, Professor Monica McWilliams, TJI University of Ulster
Presentation of CAJ 'Mapping the Rollback' Conference Paper, Daniel Holder, CAJ

**Panel One: 10.30-11.30am**
**Human Rights and Equality Commitments: 15 years on**
**Chair:** Brian Gormally, Director CAJ.
**Panel Members:** Maggie Beirne, former Director CAJ; Michael Farrell, FLAC; Patricia McKeown, UNISON. Followed by Q&A.

Top row: Maggie Beirne and Brian Gormally
Bottom row: Patricia McKeown and Michael Farrell

**Panel Two: 11.45-12.45**
**Policing Justice and Community: 15 Years on**
**Chair:** Brice Dickson, QUB Human Rights Centre
**Panel Members:** Mary O'Rawe, former chair of CAJ, Fiona McCausland, community activist, Neil Jarman, Institute of Conflict Research (ICR). Followed by Q&A.

Pictured left to right: Daniel Holder, Neil Jarman, Mary O'Rawe, Fiona McCausland, Adrienne Reilly (CAJ) and Brice Dickson

**Lunch 12.45-13.45**

**Specialist Sessions 13.45-3.30pm**

**1. Protection of Rights Frameworks 15 years on**
This session, chaired by CAJ chair and QUB Professor Kieran McEvoy, will discuss the status of rights protection frameworks envisaged under the peace agreements including the Bill of Rights for NI and the framework for the Irish language.
**Speakers:** Kevin Hanratty, Human Rights Consortium and Janet Muller, Pobal.

**2. Equality 15 years on**
This session, chaired by TJI's Dr Rory O'Connell, also a board member of CAJ will discuss the status of commitments to equality protections and socioeconomic rights within the peace agreements including provision for an anti poverty strategy, the right of women to full and equal political participation and supporting young people from areas affected by the conflict. **Speakers:** Kate Ward, Participation and the Practice of Rights (PPR); Paddy Kelly (Children's Law Centre); Emma Patterson, CAJ.

**3. Policing, Security and Justice reform 15 years on**
This session, chaired by CAJ's former Chair Mary O'Rawe, takes stock of the status of commitments to policing and justice reform, including reflecting on the Patten Commission reforms and policing accountability along with commitments in the agreements to end emergency legislation. **Speakers:** Niall Murphy, Solicitor KRW Law and Mick Beyers, former CAJ policing programme officer.

**4. Dealing with the Past**
This session, chaired by Professor Bill Rolston of TJI, will reflect on the limited provisions within the peace agreements relating to dealing with the past, including services for victims. The session will include a presentation from Kartik Raj of the International Secretariat of Amnesty International on the emerging findings of research they have been conducting in this area, other speakers include Mark Thompson, Relatives for Justice; Patricia Lundy of the University of Ulster and Alan McBride from WAVE Trauma.

**3.30 -4.30 – Feedback and Reflections from Chairs of Specialist Sessions**
Chaired by Brian Gormally, CAJ.

## Speakers Bios

**Colin Harvey** is Professor of Human Rights Law, School of Law, Queen's University Belfast. He is a member of the Academic Panel at Doughty Street Chambers in London. In 2011, he was appointed to the Research Excellence Framework 2014 (REF2014) Panel for Law, and to the REF2014 Equality and Diversity Advisory Panel. He served as Head of the Law School at Queen's (2007-2012), as a member of Senate (2010-2012) and as Director of the Human Rights Centre (2005-2008). He was Professor of Constitutional and Human Rights Law at the University of Leeds from 2000-2005. He has held Visiting Professorships at the London School of Economics, the University of Michigan, and Fordham University. Professor Harvey served on the Northern Ireland Higher Education Council (2002-2006), and the Northern Ireland Human Rights Commission (2005-2011). Professor Harvey is the General Editor of Human Rights Law in Perspective, and is the on editorial boards of: International Journal of Refugee Law, Human Rights Law Review, European Human Rights Law Review, and the Northern Ireland Legal Quarterly. He has written extensively on human rights and constitutionalism.

**Daniel Holder** has been employed as the Deputy Director of CAJ since 2011. Prior to this he worked in the policy team of the Northern Ireland Human Rights Commission for five years, and before that he led a migrant worker equality project run by the NGO the South Tyrone Empowerment Programme and Dungannon Council. He previously worked in Havana, Cuba as a language professional for the University of Havana, press agency Prensa Latina and national broadcaster, ICRT. He has a primary degree in Spanish and Sociology and an LLM in Human Rights Law, both from Queens University.

**Monica McWilliams** is Professor of Women's Studies in the School of Social Policy and an Associate Researcher in the Transitional Justice Institute, at the University of Ulster. She co-founded the Northern Ireland Women's Coalition and represented the party at the multi-party peace talks leading to the 1998 Belfast/Good Friday Agreement. She was elected to the Northern Ireland Legislative Assembly (MLA) from 1998-2003. She acted as the chairperson for the Agreement's implementation committee on human rights at the request of the British and Irish governments. From 2005-2011, Monica was the Chief Commissioner of the Northern Ireland Human Rights Commission and in 2012, she was appointed as an oversight commissioner for prison reform in Northern Ireland. Her publications include two books on domestic violence and a range of articles on the impact of conflict on women's lives. Her most recent work has involved training women on the Afghan Peace Council and in the Syrian opposition movement on gender and inclusive mediation processes.

**Brian Gormally** is Director of the Committee on the Administration of Justice, Northern Ireland's leading human rights NGO. For over a decade before that, he was an independent consultant working mainly in the voluntary and community sector and specialising in justice, human rights and equality issues. He was Deputy Director of NIACRO for 25 years until 2000 working with communities, alienated young people, ex-offenders and prisoners' families. He has published and presented extensively on justice, community policing and conflict resolution issues, particularly on politically motivated prisoner release, victims of terrorism, dealing with the past and restorative justice. He has been involved in international peace-related work in South Africa, Israel/Palestine, the Basque Country, Italy and, more recently, Colombia. He has also worked on a number of projects on equality and human rights with the trade union movement and on the Bill of Rights with the NI Human Rights Commission.

**Maggie Beirne** worked for Amnesty International at its International Secretariat in London from 1971 to 1988. As head of the Campaigns and Membership Department, she managed the work of some 30 staff tasked with developing membership in Asia, Africa, Latin America and the Middle East. Maggie moved to Northern Ireland and worked with CAJ from the end of the 1980s until 2008 first as a volunteer, then as Research & Policy Officer, and then as Director. She was closely involved in CAJ's work in the lead-up and follow-up to the peace negotiations which placed human rights centre-stage in the eventual Good Friday/Belfast Agreement, and for which the organisation was awarded the Council of Europe Human Rights Prize. Since returning to London in 2008, Ms Beirne has undertaken a number of short human rights projects for the International Commission of Jurists, the Council of Europe Human Rights Commissioner, Atlantic Philanthropies and others. She is a Visiting Fellow at the School of Law at the University of Bristol; a board member of the International Council on Human Rights Policy (Geneva) and the Irish Support and Advice Service (London); and she sits on the advisory boards of the Association for the Prevention of Torture (Geneva) and the Centre for Human Rights of People with Disabilities (Belfast) – the latter of which she chairs. Ms Beirne is a graduate of Balliol College, Oxford University, with a B.A. in Philosophy, Politics, and Economics and holds an MSSc in Irish Politics from Queens University, Belfast.

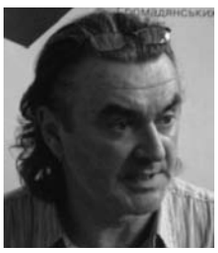
**Michael Farrell** is the senior solicitor with FLAC. He formerly worked as a solicitor in private practice and has taken cases to the European Court of Human Rights, the UN Human Rights Committee and the European Committee of Social Rights. He is a former Co-Chairperson of the Irish Council for Civil Liberties and was a member of the Irish Human Rights Commission from 2001 to 2011 and of the working group on the proposed merger of the IHRC and the Equality Authority. He is the Irish member of the Council of Europe Commission Against Racism and Intolerance (ECRI) and a member of the Council of State.

**Patricia McKeown** is the NI Regional Secretary of the public service union UNISON. She is lead negotiator in the public service and represents both UNISON and ICTU on a wide range of public policy forums. Patricia is a lifelong campaigner for equality and human rights - with a primary focus on women's rights. She represented ICTU in the Bill of Rights Forum and was Chair of its Working Group on Socio Economic Rights. Patricia is a past President of the Irish Congress of Trade Unions (2007-2009) and currently represents ICTU on the cross border body InterTrade Ireland. She has previously chaired the ICTU Northern Ireland Committee and as a trade union nominee was Deputy Chairperson of the Equal Opportunities Commission (NI).

**Brice Dickson** is Professor of International and Comparative Law at Queen's University Belfast. He was Chief Commissioner of the Northern Ireland Human Rights Commission from 1999 to 2005 and has been an independent member of the Northern Ireland Policing Board since March 2012. His latest book is Human Rights and the UK Supreme Court (OUP, 2013).

**Dr Mary O'Rawe** is a barrister, mother of 6 and currently on leave from her position as Senior Law Lecturer at the University of Ulster, to serve as counsel to the Senior Coroner for Northern Ireland in the 'Stalker/Sampson' series of legacy inquests. Mary has extensive experience as a legal practitioner, NGO activist and human rights consultant. She is a former chairperson of the Peace People and the Committee on the Administration of Justice, and was co-founder of the Northern Ireland Lawyers' Section of Amnesty International. Over the past 20 years she has researched and published extensively in the field of policing and human rights, with her main focus being on policing in societies in transition. In 1996/7, Mary and Dr Linda Moore undertook an international empirical research project for CAJ, into policing in transition, which culminated in the book Human Rights on Duty: Principles for Better Policing – Lessons for Northern Ireland. Mary has been involved in a range of human rights initiatives with a number of policing agencies and NGOs both locally and more globally.

**Fiona McCausland** is currently working as an anti-poverty campaigner and chairs the Human Rights Consortium, which campaigns for a strong and inclusive Bill of Rights. Fiona originallyill of Rights. Fiona originally trained and worked as an accountant from 1985 to 1992. In 1992 she became involved in Community Development and up until 2008 worked in loyalist working class areas, qualifying as a Youth and Community Development practitioner. Fiona's involvement with CAJ led to a strong belief that Human rights and equality issues should underpin all aspects of Community Development. She is currently studying for the LLM in Human Rights at Queens.



**Neil Jarman** is director of the Institute for Conflict Research, a not-for-profit, policy research centre, and a Research Fellow at the newly established Institute for the Study of Conflict Transformation and Social Justice at Queens University. His research interests include the role of the civil society in peacebuilding; public order policing; hate crimes and issues related to migration and cultural diversity. He also chairs the Panel on Freedom of Assembly at the Warsaw based Office of Democratic Institutions and Human Rights, part of the Organisation for Security and Co-operation in Europe. The panel has produced two editions of the Guidelines on Freedom of Peaceful Assembly, prepares legal opinions of law relating to freedom of assembly and runs a training programme for human rights defenders.

**Kieran McEvoy** is Professor of Law and Transitional Justice and Director of Research at the School of Law, Queens University Belfast. He is also Chairperson of the Committee on the Administration of Justice and has been on the Board of CAJ for 17 of the last 20 years. He is author or co-author of three books, has co-edited 6 books and journal special issues and published over fifty articles and book chapters on a diverse range of criminological, human rights and transitional justice related topics.

**Kevin Hanratty** is the Campaigns and Consortium Manager with the Human Rights Consortium - a coalition of almost 200 groups that campaign for a strong and inclusive Bill of Rights for Northern Ireland. He has previously worked as a Human Rights Officer with the OSCE Field Mission in Bosnia and Herzegovina, a Political Consultant with the NDI in Macedonia and in policy and research work for the Social Democratic and Labour Party.

**Janet Muller** is the Chief Executive of POBAL, the non-governmental umbrella organisation for the Irish speaking community in the north of Ireland. She is responsible for the organisation's strategic direction in relation to advocacy work and community development. She has spearheaded the initiative to establish an Irish Language Act for the north and been active in work around the Bill of Rights NI and the Framework Convention for the Protection of National Minorities. She has overseen the drafting of POBAL's monitoring and research reports on the implementation of the European Charter for Regional or Minority Languages since its ratification. She has researched legislative and planning initiatives nationally and internationally as well as studying and promoting models of good practice. In 2010, Palgrave Macmillan published her book, Language and Conflict in Northern Ireland and Canada: A Silent War. She has a PhD from the University of Ulster.

Mar phríomhfheidhmeannach POBAL, scátheagras neamhrialtasach do phobal na Gaeilge ó thuaidh, tá Janet Muller freagrach as treoir straitéiseach na heagraíochta i dtaca le hobair abhcóideachta agus fhorbairt pobail de, a stiúradh. Tá sí ina ceannródaí ar an tionscadal le hAcht na Gaeilge a fháil do TÉ. Chomh maith leis seo, déanann sí obair ar

Bhille Ceart TÉ agus ar an Chreatchoinbhinsiún um Chosaint na Mionlach Náisiúnta. Rinne sí monatóireacht ar chur i gcrích Chairt na hEorpa do Theangacha Réigiúnda nó Mionlaigh a bhunú agus a threorú ó dhaingniú na Cairte. Tá taighde déanta aici ar reachtaíocht agus ar phleanáil teanga ar bhonn náisiúnta agus idirnáisiúnta, chomh maith le heiseamláirí den deachleachtas a scrúdú is a chur chun cinn. I 2010, d'fhoilsigh Palgrave Macmillan a leabhar, Language and Conflict in Northern Ireland and Canada: A Silent War. Tá PhD aici ó Ollscoil Uladh.

**Rory O'Connell** is Professor of Human Rights and Constitutional Law at the Transitional Justice Institute / School of Law at the University of Ulster, which he joined in 2013. Rory's research and teaching interests are in the areas of Human Rights and Equality, Constitutional Law and Legal Theory. His publications 'Cinderella comes to the Ball: Article 14 and the right to non-discrimination in the ECHR' (2009) 29 (2) Legal Studies: The Journal of the Society of Legal Scholars 211-229; 'Realising political equality: the European Court of Human Rights and positive obligations in a democracy' (2010) 61 (3) Northern Ireland Legal Quarterly 263-279; 'The Right to Work in the European Convention on Human Rights' (2012) (2) EHRLR 176-190. Prior to 2013 Rory worked in the School of Law / Human Rights Centre at QUB.

**Kate Ward** is the Policy & Research Support Officer with the Participation and Practice of Rights (PPR) organisation in Belfast, N. Ireland, where she has worked since 2009. Kate holds a Bachelor's degree in Law and Spanish from Queen's University, Belfast and a Masters degree in International Human Rights Law from the Irish Centre for Human Rights in Galway. PPR was founded in 2006 by human rights and trade union activist, the late Inez McCormack and works to put the power of human rights at the service of those who need it most. We help marginalised groups use rights in practical ways to make real social and economic change in their communities. PPR currently works on issues such as mental health, social housing, urban regeneration and unemployment and welfare support. For more on PPR please visit www.pprproject.org or follow @PPR_Org on Twitter

**Paddy Kelly** has an LLB and LLM in Human Rights from QUB. She is a Barrister by profession. After practising as a Barrister, Paddy worked for a number of years with voluntary sector organisations. In 1997, after the first examination of the UK government by the UN Committee on the Rights of the Child, she established the Children's Law Centre (CLC), a children's rights legal charity. She is currently its Director. She has led, along with Save the Children, the NGO sector in this jurisdiction, in reporting to the UN Committee on the Rights of the Child for all 3 of the UK's examinations. Paddy was appointed in 1999 as a Commissioner to the first Northern Ireland Human Rights Commission. In addition to sitting on a range of NIHRC Committees, she convened the North/South Joint Human Rights Commissions' Working Group, established to consider an all Ireland Charter of Rights. Paddy also sat on the Bill of Rights Forum. Paddy currently sits on the Board of the Human Rights Consortium. She also represents the voluntary

sector on the inter-agency Criminal Justice Issues Group established on foot of a recommendation of the Criminal Justice Review.

**Emma Patterson** has the dual function of being the part-time Equality Officer for the Committee on the Administration of justice (CAJ) and Equality Coalition Coordinator. The Equality Coalition is a membership organisation co-convened by the Committee on the Administration of Justice (CAJ) and UNISON. Before taking up the Equality Coalition role Emma was employed by the Commissioner for Children and Young People (NICCY) and the Older People's Advocate NI (OPA). Emma studied Criminology and Criminal Justice at the University of Portsmouth and then completed her Masters in Criminal Justice at Queens University Belfast. For the past two years her human rights focus has been in the women's sector focusing on UNSCR 1325 and women's role in post-conflict NI. Emma also studied Peace and Conflict Resolution at INCORE summer school. Through the Northern Ireland Women's European Platform (NIWEP) Emma is secretariat to the All Party Working Group on 1325 at the Northern Ireland Assembly. For CAJ she is also leading on the upcoming shadow report for the United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which is coming before the UN Committee in July 2013.

**Niall Murphy** is a solicitor and partner in KRW LAW LLP, the largest criminal law practice on the island of Ireland. Educated at St Mary's CBGS in Belfast, he graduated from QUB with a law degree in 1998, serving an apprenticeship at Madden and Finucane Solicitors. Niall was the first solicitor employed by Kevin Winters and Co in 2001, becoming a partner in 2003 and has worked on several of the most significant criminal trials of this century. KRW LAW is now at the forefront of a burgeoning area of practice in dealing with the past and have appeared in many of the ground breaking cases involving state collusion litigation, appearing for those bereaved as a result of atrocities such as Ormeau Road, Loughinisland, the Dublin / Monaghan and McGurks Bar bombings.

**Dr Mick Beyers**, MSW moved to Ireland from Arizona in 2004. She has a long standing interest in societies in conflict and has worked on a variety of social justice and human rights concerns on the Mexican border and in the north. In Ireland she completed her doctoral degree in social welfare and conducted extensive research on victim/survivor issues, former political prisoner issues, and dealing with the legacy of the conflict. She joined CAJ in 2009 as the Policing Programme Officer and conducted major pieces of research on the Police Ombudsman's Office as well as the accountability gap with respect to 'national security' policing which she co-authored with Daniel Holder.

**Bill Rolston** is Director of the Transitional Justice Institute and Professor of Sociology at the University of Ulster. He has an undergraduate degree and doctorate, both in Sociology and both obtained at Queen's University Belfast. He has been lecturing in Sociology at Jordanstown since 1977. During this period he has also written and researched widely on numerous aspects of society, politics and culture in Northern Ireland. His research interests have been in the areas of popular political culture, in particular, wall murals; community and voluntary politics in Northern Ireland; the mass media. Most recently his main research interests have focused on transitional justice and in particular the legacy of the Northern Ireland conflict and the complexities involved in dealing with the past. He has documented the experience of relatives of those killed by state forces and how they have embarked on a quest for truth and justice; examined the appropriateness of a truth commission for Northern Ireland; considered the attitudes of loyalist ex-prisoners and ex-combatants to truth and truth recovery mechanisms; charted the involvement of death squads in violence and their relationship to the British state through collusion; compared the process of demobilisation of combatants in Northern Ireland to that in other transitional societies; critiqued a major television series which brought together ex-combatants and victims; analysed the way in which some victims' groups see memory as a tool not merely for telling stories but for pursuing justice; and explored the ways in which murals have been transformed by and in response to the developing peace process in Northern Ireland.

**Kartik Raj** is a Campaigner in the European Union Team at Amnesty International's International Secretariat. He covers human rights issues in a number of EU countries, focusing primarily on France and the UK, and is part of the Amnesty International team conducting an ongoing research project on accountability processes in Northern Ireland.

**Mark Thompson** is one of the founder members of Relatives for Justice (RFJ) and is the organization's current Director. Under Mark's tenure RFJ has emerged as a respected and leading NGO supporting victims and survivors of the conflict, addressing legacy and promoting human rights. Mark has been a leading advocate in the truth, justice and legacy debate. Mark had a brother and a cousin killed in the conflict.

**Patricia Lundy's** research interests are in the study of post-conflict transition, 'dealing with the past', contested memories and the legacy of human rights abuses. She has studied unofficial community-based 'truth recovery' processes and official police-led historical enquiries. She is particularly interested in 'truth' recovery and 'bottom-up' participatory approaches. Her most recent research is an in-depth study of the Historical Enquiries Team (HET) Police Service Northern Ireland (PSNI). She is Professor of Sociology at the University of Ulster and Executive Board member of CAJ.

**Alan McBride** is the Centre Co-ordinator of the WAVE Trauma Centre in Belfast and has been a tireless worker for peace, his wife Sharon was among nine people killed by the IRA in the Shankill bomb atrocity in 1993. In 1999 he achieved a Degree in Community Youth Work at the University of Ulster with first class honours and in 2006 an Mphil in Reconciliation Studies through the Irish School of Ecumenics (Belfast), Trinity College Dublin. Alan's work with WAVE includes the day to day management of the centre, but beyond this he also facilitates groups, edits the organisational magazine, and collates stories from members for inclusion in a number of publications. Alan also sits on the board of Healing Through Remembering (HTR), a group set up to find ways of allowing Northern Ireland to address its troubled past – he has primary responsibility for the HTR subgroup on a 'Living Memorial Museum'. In addition to this in 2011 he was appointed one of seven part-time commissioners with the Northern Ireland Human Rights Commissions. He is currently the lead Commissioner concerning transitional justice.

**OPENING PLENARY**

**Chair: Professor Colin Harvey, QUB Human Rights Centre**

**Presentation of CAJ 'Mapping the Rollback' Matrix Paper**
**Daniel Holder, CAJ**

An updated 'Mapping the Rollback' Matrix paper, providing a detailed breakdown of the status of implementation of the Agreements human rights commitments is included as Appendix A to this report.

**Reflections of a Participant**
**Professor Monica McWilliams, TJI University of Ulster**

**A full video recording Monica's detailed presentation on the 'reflections of a participant' in the 1998 Agreement negotiations fifteen years on is available on the CAJ website at the following link:**

**www.caj.org.uk/mappingtherollbck**

# Human Rights and Equality Commitments 15 Years On:

## Where are we coming from?

**Maggie Beirne, former CAJ Director**

**Synopsis:** the speaker reflects on where the human rights and equality commitments in the Agreements came from, and the role of civil society in their development. There is reflection on the difficulties of translating the initial political will into changes in both law and practice and also on the lessons going forward for current human rights 'failings' reflecting on the experiences of the Agreement processes.

Looking back at where the human rights and equality provisions negotiated in the Agreement came from, it is noteworthy that early human rights efforts in the decade of the 1970s - in the shadow of the attack on civil rights marchers on Bloody Sunday (1972) – were largely disparate, uncoordinated, and largely single issue. The Committee on the Administration of Justice (CAJ) was established in 1981 and for its first ten years it was working in a very hostile and difficult environment. Its members were very active, producing reports, lobbying Direct Rule Ministers, and meeting with a range of officials on many different civil liberty issues, but the work had to be essentially reactive, and must have often felt quite lonely and difficult.

However, in the late 80s/early 90s, in part because of internal strategic reviews at which CAJ concluded it was not effecting sufficient change, a decision was made to start levering out more international pressure. There was a focus on alliance-building, initially at the international level only. Visits to the US became routine, and contact was established with the then Lawyers Committee for Human Rights (now Human Rights First) and Human Rights Watch, as well as with different individuals and interests in the US Administration. CAJ also affiliated around this time to the International Federation of Human Rights (normally known by its French acronym, the FIDH) so as to make better use of the relatively new international UN treaty mechanisms, and this indeed also led to quarterly strategy meetings with the British and Irish members of the FIDH (the Irish and Scottish Councils for Civil Liberties, and Liberty, alongside CAJ). Bit by bit, some international "legitimacy" was secured, with the awarding of the Reebok Prize, and

positive results in terms of Congressional statements emphasising the centrality of rights. In passing, particular reference ought to be made to UN successes such as the Committee Against Torture ruling which seemed at the time to lead directly to a decrease in allegations of psychological ill-treatment, and the Committee for the Elimination of Racial Discrimination's influence in – at last – ensuring anti-race discrimination legislation was extended to Northern Ireland.

Another major phase of the work started with the paramilitary ceasefires. The IRA ceasefire was announced on 31 August 1994, with loyalists soon after, and human rights NGOs were able (because of their well established links) to convene a meeting only six weeks later to discuss the potential offered by peace. The meeting developed a strategy for the next few months, and in due course a common statement was issued on Human Rights Day (10 December 1994); a Chatham House seminar was organised in January 1995 with senior police, Northern Ireland Office and Department of Foreign Affairs personnel, and others; and a major public conference was organised in March 1995 to develop, and then issue, a Human Rights Agenda for Change.

The roots of later human rights statements can be detected in this work carried out in the wake of the first ceasefires. So "Donegall Street Declaration" – the NGO Human Rights Day (1994) statement, named after the then office address of CAJ noted that:

> *"Just as the conflict in NI has led to emergency laws and assaults on democratic rights and freedoms in all the jurisdictions of these islands, so the opportunity must now be taken not just to dismantle this apparatus of repression, but to put in place safeguards which will prevent any similar erosion of human rights and civil liberties in any of these jurisdictions in future" (10 December 1994)*

Less than three months later, the Human Rights Agenda for Change concluded, inter alia:

> *"In face of the suffering experienced by all the communities here, it is morally unacceptable for human rights to be used as bargaining counters to reach some 'political settlement'... Protection for human rights is not an optional extra but a pre-requisite for lasting peace. The manner in which human rights are to be protected and safeguarded is crucial in shaping the peace process and determining the success of that process" (March 1995)*

The public conference developed an 18 point Agenda which fell under five distinct but inter-connected rubrics:

- Constitutional guarantees (ie a call for 'permanent' codified protections by way of a Bill of Rights for Northern Ireland)
- Legislative measures (an end to emergency laws and reform of the criminal justice system)
- Institutional changes (major changes required to policing and the judiciary)
- Dealing with the past (some mechanisms for addressing the right to truth and measures to deal with prisoners and issues of impunity)
- Building for the future (strengthening the non-discrimination and equality safeguards, and developing a culture of human rights and improved educational provision for future generations)

Now, for the first time, the human rights community had a comprehensive idea of the array of measures that would be needed to build peace on a sure foundation. However, less than a year later, in February 1996, the ceasefires collapsed and all talk of a peaceful future seemed overly optimistic. Nevertheless the work continued steadily and indeed a major piece of international comparative policing research was completed (entitled Human Rights on Duty) just months before what was to become the Agreement, positioning us well to comment on what was needed in terms of policing change. The talks process itself was highly confidential and did not explicitly involve civil society but the draft text was made available to CAJ at a late stage and this, combined with our detailed knowledge of which political parties were interested in which aspects of the 18-point Agenda for Change, allowed human rights advocates to intervene knowledgeably and relatively effectively.

Even years later, there is obviously much to be reassured by in the text of the Agreement. Human rights language and constructs permeate all aspects of the document, not merely in a formulaic way in opening clauses, but also in specific detailed provisions touching on policing, criminal justice, equality, national human rights institutions etc. One has only to compare the language used in the 1994 NGO call for a Commission into Policing with the text agreed in the Good Friday/Belfast Agreement, to see many echoes. For those interested, it is worth examining a document that CAJ issued at the time which gives a detailed analysis of the Agreement. CAJ took no position on the Agreement *per se* (given its detailed provisions on NI's future political arrangements, in response to which we had nothing to say) but it did welcome the very positive human rights and equality commitments contained therein. (CAJ, Submission s69).

The rest of the day will focus on the difficulties of turning these early commitments into practice on the ground, and that is not my role here. However, it may be worth emphasising how difficult it was to translate the initial political will for change into change both in law and in practice, even in those very early phases of the peace building process. So, for example, the Northern Ireland Act does contain the equality provisions we now term Section 75, and which we now frequently bemoan. But it proved very difficult to secure that text, and there were for a period almost weekly meetings with the then Secretary of State to translate the desire for equality proofing into concrete legal provisions. People will also be well aware that it took an incredible effort to translate the Patten policing proposals into law. The then Secretary of State insisted that the initial draft, and the final draft submitted for parliamentary approval (and necessitating more than 100 substantive amendments), were both somehow reflective of Patten!

It is probably not the time to go into anecdotes of meetings with the Prison Service, and the RUC/PSNI, to exemplify how difficult it was to translate change into the practice of these institutions. Legal change is demanding, but ensuring that legal, or other attitudinal change, actually translates into change on the streets, or in one's day-to-day behaviour, is even more difficult.

In the long term, human rights activists decided that the best hope for change (especially since there was likely to be less international interest in future) was in ending the marginalisation of human rights issues. It was vital that human rights be embedded, and protected, because it was mainstreamed into everyday practice, and because it was embraced as a goal for civil society more broadly, not just the "usual suspects". It was

with this in mind that gradually, over time, new effective domestic alliances were developed to provide effective underpinning and campaigning around human rights. The Equality Coalition and the Human Rights Consortium came into being to campaign around equality and Bill of Rights respectively; the Public Interest Litigation Support (PILS) was established to help litigate and embed some of the advances into the practice of public authorities; and the Participation and the Practice of Rights (PPR) works hard at the community level to ensure that human rights gains deliver for the people who most need them.

So, what are the lessons going forward? It is actually difficult to know, and maybe others, or other discussions through the course of the day, may throw some light on the way forward.

For example, it seems obvious that some current human rights "failings" have their genesis in Agreement inadequacies - but the lessons to be drawn from this are unclear. For example, many people will say that we do not yet have a Bill of Rights for Northern Ireland because the Agreement text is somewhat ambiguous, and ambiguity is easily exploited. However, if this were the main reason for a lack of progress on a Bill of Rights, why has the equality debate also faced such difficulties in its operationalisation? Few people would argue that the Section 75 duty was ambiguous, or inadequately legislated for. Indeed, most of the criticisms are levelled at how the detail of the equality duty has been used to undermine the principles of equality. So, maybe the equality provisions of the Agreement were overly detailed, and the Bill of Rights insufficiently detailed: if either of these reasons is right, what should we recommend to other jurisdictions coming out of conflict? Of course, some examples of current human rights "failings" – most obviously, the failure to deal with the past or to address long ingrained social and economic disadvantage – clearly derive from the failure of the Agreement to address them at all.

Another series of current human rights "failings" arguably trace their genesis to Agreement 'successes' - but again the lessons are unclear. So, it is likely that people will say in the different sessions today that a current obstacle to the work lies in the belief that the Agreement was so important that "it's all solved now". People seen as criticising a lack of progress are seen to be somehow criticising the Agreement *per se*, rather than recognising that it brought about important changes, but should continue to be built upon. Another "success" of the Agreement was the way it tackled the importance of political inclusion, and who could decry the advance represented by having the constituencies of Sinn Fein and the Democratic Unionist Party effectively represented? At the same time, the idea of political inclusion is to reduce exclusion and it is not acceptable that SF/DUP see their role as divvying out the goodies to their supporters; they must instead govern in a fair and just way for ALL of NI's peoples. Another potential challenge lies in the risk that human rights become so mainstreamed that they are seen as "bland", and human rights language starts to cement rather than challenge the status quo.

So, one can only conclude that it will be vital that human rights advocates continue to think strategically; they must be pro-active; they must build alliances; they must be persistent, but also argue for renewal .....and 'eternal vigilance' seems as vital as ever.

# Human Rights and Equality Commitments 15 Years On:

## The Irish Government's compliance with its commitments

**Michael Farrell, Senior Solicitor, Free Legal Advice Centres**

**Synopsis**: Michael Farrell reflects on the implementation of the Irish state's commitments under the Agreements to strengthen human rights protection in its jurisdiction, in particular:

- Incorporation of the ECHR;
- Establishment of the Irish Human Rights Commission and an all-island Joint Committee;
- Review of emergency powers in Offences Against the State Acts;
- An equivalent level of protection of human rights.

The signing of the Belfast/Good Friday Agreement produced a wave of euphoria in the Republic of Ireland as well as Northern Ireland. Most of it was probably relief at what people hoped was the definitive ending of the armed conflict, but there was also a hope and aspiration that the Agreement would lead to a fairer, more inclusive and human rights-based society across the whole island. And in the NGO and civil society community there was a hope that the introduction of new human rights protections, North and South, would be mutually reinforcing, with best practice in one jurisdiction raising standards in the other as well.

Perhaps it was our 'Northern Spring', with all the enthusiasm that greeted the 'Arab Spring' in more recent times. But in Ireland, as we know to our cost, spring is not always followed by summer. And so, I am afraid, it proved in the human rights field in the Republic.

So, what human rights reforms were promised in the Republic as part of the Agreement? And what has happened to those promises?

In the section of the Agreement entitled "*Rights, Safeguards and Equality of Opportunity*", and under the heading "*Comparable Steps by the Irish government*", the Dublin Government made a number of commitments so as to "*further strengthen the protection of human rights in its jurisdiction*".

Some of these were delivered on fairly quickly, like the introduction of equal status and enhanced employment equality legislation, which were needed to meet EU requirements in any event. The Irish Government also ratified the Council of Europe Framework Convention on National Minorities, which has proved a valuable instrument for

supporting Travellers' rights. And they have taken some steps to recognise and include Unionist identity and the Orange Order.

But what I want to concentrate on is the other main commitments, where the record has been less impressive. They were to:

- Consider incorporating the European Convention on Human Rights (ECHR) into domestic legislation;
- Establish a Human Rights Commission and a Joint Committee with the Northern Ireland Human Rights Commission;
- Ensure an equivalent level of human rights protection to that in Northern Ireland;

And, from the section of the Agreement on "*Security*", to

- Review the Offences Against the State Act "*with a view to both reform and dispensing with those elements no longer required as circumstances permit"*.

**Incorporating the ECHR**

It took five years from the signing of the Agreement, and a good deal of lobbying and campaigning by bodies like the ICCL, the Law Society and the new Irish Human Rights Commission (IHRC) before the Republic incorporated the ECHR into its domestic law. through the ECHR Act, 2003, which came into effect at the start of 2004.

The Act was modelled on the UK Human Rights Act, 1998 but with some significant differences. It specifically excluded the courts from the definition of public authorities which were required to act compatibly with the ECHR, and it had no procedure for fast-tracking changes in the law where a court had declared a provision of legislation incompatible with the Convention. In addition, it had no requirement for Ministers introducing legislation to state that the proposed legislation complied with the Convention.

There was also no Government-sponsored programme of education for lawyers, civil servants and others about the requirements of the Convention in the run-up to its introduction, as there had been in the UK. Perhaps partly as a result of this, litigation relying on the ECHR Act was slow to come before the courts and the first declaration of incompatibility with the ECHR was not made until October 2007 in the case of transgender woman Dr. Lydia Foy, who was represented by the organisation I work for, Free Legal Advice Centres (FLAC).

Today, five and a half years after the granting of the declaration and 20 years after Dr Foy's first application for a new birth certificate in her female gender, and despite promises by the present Government and its predecessor, there has been no change in the law and Dr Foy has still not got her birth certificate.

A number of other declarations of incompatibility were made subsequently in housing cases, some of which are under appeal and one of which has been upheld by the Supreme Court, but the law has not been changed in that area either, although it may be dealt with more quickly than Dr Foy's case because the housing cases involve changes in procedure rather than substantive change.

The long delay in bringing in the ECHR Act and the equally long delay in acting upon the first declaration of incompatibility suggest a basic lack of commitment and respect for the ECHR. And it is also at odds with the commitment to a new rights-based society for the whole island, drawing upon the ECHR, which was central to the Rights and Equality section of the Agreement.

**The Irish Human Rights Commission**

The Irish Government was also slower to set up a Human Rights Commission than the British Government had been in the North. The IHRC was not established until 2001 and then only after a major row when the Government initially failed to appoint a number of the people (myself included) who had been recommended by the Government-appointed selection committee.

The new Commission was underfunded from the beginning and did not achieve its full complement of 22 staff until about 2008, seven years after it was set up. It had a number of policy clashes with Government, notably in 2007, when it criticised the Government's failure to ensure that US aircraft re-fuelling at Shannon were not involved in the policy of extraordinary rendition, or the outsourcing of torture.

As soon as the first tremors of the financial crisis were felt in 2008, the Department of Justice, which was responsible for the funding of the IHRC and the Equality Authority, announced, without any consultation, discussion or planning, a merger of the IHRC, the Equality Authority and three other agencies (the Data Protection commissioner, the National Disability Authority and the Equality Tribunal).

The proposed merger was widely seen as punishment for the independence of the IHRC and the Equality Authority, which had also annoyed the Government by taking discrimination cases against state bodies. There was sufficient opposition at the time to stop the merger but in the 2009 Budget, the Department of Justice slashed the IHRC allocation by 32% and that of the Equality Authority by 43%, far beyond the average 10% cut imposed on most public bodies.

Since then, further, smaller budget cuts and a bar on recruiting new staff to fill vacancies have reduced both the IHRC and the Equality Authority to shadows of their former selves. The budgets of the two bodies have now been cut by about 40% for the IHRC and nearer 50% for the Authority, and the staff of the IHRC has been reduced to six from a peak of 22, while the staff of the Authority has been reduced to around 20 from a peak figure of 55. Neither body is in a position to carry out its full mandate and they are both struggling to keep their heads above water.

The Fine Gael and Labour Government which came to power in 2011 announced a new merger plan which they claimed would result in an 'enhanced' and 'strengthened' Human Rights and Equality Commission. However, when the terms of office of the boards of the two bodies came to an end in 2011 and early 2012, they were not replaced and the two bodies have been left in limbo for over a year while staff drifted away and there was no money to take any initiatives or even carry out their normal workload.

Finally, last week, the Minister for Justice announced the names of the members of the new Irish Human Rights and Equality Commission (IHREC), although the legislation to establish the new body has not yet been passed and the Chief Commissioner has yet to be appointed. And, in an echo of the past, there was also another, smaller controversy between the Minister or the Department of Justice and the selection committee that the Minister had appointed, when the Department objected that one of the persons recommended by the selection committee was ineligible for appointment.

The indications at the moment are that there will be no significant increase in funding for the new body and for that reason the new IHREC will be significantly weaker than the original bodies were five years ago. The reason for the running down of the human rights and equality structures by the current Government may no longer be the active hostility that appears to have motivated its predecessor, but there must be serious questions about the new Commission's ability to carry out its increased mandate and the clear implication is that the protection of human rights and equality comes fairly low down on this Government's list of priorities.
It is also evident that no serious thought was given to the commitment in the Agreement to "*establish a Human Rights Commission with a mandate and remit equivalent to that within Northern Ireland*". The remit of the new IHREC will be significantly different from that of the NIHRC and even though it may actually be enhanced, the terms of the Agreement would have required this development to at least be discussed with its Northern equivalent. And I can say, as a member of the Working Group which was tasked with drawing up details of the merger, that there appeared to have been very little consideration given to the position of the NIHRC or the Northern Ireland dimension beforehand.

**The Joint Committee**

The Joint Committee of the two Human Rights Commissions was in some ways the institution most clearly linked with the concept of a common platform of human rights protections on the island, North and South. It was specifically described as "*a forum for consideration of human rights issues in the island of Ireland*".

Most of the subsequent discussion of the Joint Committee's role has been connected with the idea of a Charter of "*measures for the protection of the fundamental rights of everyone living in the island of Ireland*", but in the Agreement, the Charter is mentioned as only one of the matters that the Committee might discuss.

The Joint Committee began with considerable enthusiasm. It met once a month in the beginning and established sub-committees on racism, emergency legislation and on the proposed Charter of Rights. Unfortunately, however, both commissions were under-funded and under-staffed and pressure of work required for their domestic agendas meant that there was no capacity to service the Joint Committee and enable it to carry out research or take new initiatives.

For a period in 2008 the two governments provided some additional funding for the employment of a dedicated Joint Committee officer, who was, in fact, our Chair for this session, Brian Gormally. However, with the swingeing budget cuts in 2009, the funding was not renewed and from then on the only substantial work completed by the

Committee was an Advice on the Charter of Rights published in 2011. And Joint Committee meetings became less and less frequent until they eventually petered out when the term of office of the IHRC Commissioners came to an end and they were not replaced.

The Charter of Rights itself fell victim to the UK Government's failure to establish the proposed Bill of Rights for Northern Ireland. With the NIHRC's detailed and painstaking Advice on the Bill of Rights effectively rejected, there was not much left for the Joint Committee to build on and it had to settle for an Advice which was essentially a listing of the existing human rights protections in force in each jurisdiction; a useful but modest contribution.

The effective failure of the Joint Committee was the responsibility of both governments, who showed no real interest in the one specifically all-island structure in the Rights and Equality section of the Agreement, and the one which was most clearly aimed at putting in place a common platform of rights that could be ensured to all the people of the island no matter what future political arrangements might be put in place.

**The Offences Against the State Acts**

A committee was set up in 1999 to review the Offences Against the State Acts. It was heavily weighted towards the law enforcement agencies and the majority paid little attention to the parallel commitment by the UK Government in the Agreement to secure *"as early a return as possible to normal security arrangements ... and ... the removal of emergency powers in Northern Ireland*". They showed no enthusiasm for dismantling the emergency laws in their jurisdiction.

The committee reported in 2002 and despite the much lower level of paramilitary violence in the Republic, the majority recommended keeping internment without trial on the statute book and the continued use of the non-jury Special Criminal Court. The Government in turn failed to implement even some minor reforms proposed by the committee.

Unfortunately, an opportunity was lost to begin dismantling emergency legislation in circumstances where it should have been a lot easier than in Northern Ireland. And in 2009, faced with an increase in organised crime, the Irish Government brought in new legislation to provide that alleged gangland crimes should be routinely tried in the Special Criminal Court without the need to prove a credible threat of jury intimidation and despite opposition from the IHRC.

**An Equivalent Level of Protection of Human Rights**

The Agreement committed the Republic to "*ensure **at least** (my emphasis) an equivalent level of human rights protection as will pertain in Northern Ireland*". The level could be higher and then there would be an implied requirement for Northern Ireland to catch up. Unfortunately, that has rarely been the case.

We have already seen that the Republic's ECHR Act was weaker in certain respects than the UK's Human Rights Act. One of the weaker aspects was that there was no

requirement for Ministers introducing legislation to certify that it would comply with the ECHR. That was perhaps symptomatic of the attitude prevailing in the Republic.
Despite the commitments in the Agreement to strengthen the protection of human rights in the Republic and provide an equivalent level of protection with Northern Ireland, there has been little evidence that during the drafting of legislation anyone has felt an obligation to check for compliance with the ECHR, and even less evidence that they have consciously tried to bring the legislation into line with some of the more enlightened provisions in the North.

In the area of Equality Law, for instance, there was no equivalent of the Section 75 duty requiring public bodies in Northern Ireland to have due regard to promoting equality when carrying out their functions, and no apparent interest in introducing such a duty, when it was called for by elements of civil society. The new legislation to set up the IHREC will now contain a weaker form of positive duty on public bodies than that in Northern Ireland, but even that duty had to be very hard fought for in the Working Group preparing for the merger.

**Conclusion**

Despite the very broad popular support for the Agreement in the Republic and the enthusiasm, at least among the NGOs and in civil society generally, for the ideal of a common, and enhanced, human rights space throughout the island, successive governments in Dublin have paid little more than lip service to their human rights commitments under the Agreement.

It is hard to avoid the conclusion that high principles and lofty ideals were adopted, no doubt sincerely at the time, as part of a contribution to ending the conflict in Northern Ireland, but that when the conflict appeared to be over, they were largely confined to moth balls and normal politics resumed as before.

That may be a little too pessimistic, however. Commitments were given by the Irish Government in the Agreement. New institutions were established and however much they have been run down, they can be rebuilt again with determination and hard work. Legislation has been passed and we can try to make it work. And the commitment by the NGOs and civil society is still there, even if they are somewhat disillusioned.

This conference is a very welcome endeavour because the 15th anniversary of the Agreement provides an opportunity to raise awareness about it once again and to lobby and campaign about unfinished business in the human rights area, North and South.

And, finally, there are two areas where there may be an opportunity to make some progress and reverse the negative trend of the last number of years. However, it will take very hard work by the human rights community and skilful and strategic use of litigation and of the international human rights mechanisms to secure change.
In the Lydia Foy case, Dr Foy has issued new legal proceedings seeking orders to compel the State to take action based on the declaration of incompatibility in her case and to grant her legal recognition. Her action should either lead to confirmation that declarations of incompatibility are an effective method of obtaining redress for violations of the European Convention on Human rights, or force a revamp of the ECHR Act to

enable it to provide an effective remedy.

And, as we have seen, a new board is about to take office in order to set up the new, merged, IHREC. The board is a good one and draws extensively from the NGO community, but the two precursor bodies have been severely damaged by budget cuts, staff reduction, neglect for the last 18 months, and political interference over the years, facilitated by the fact that they were placed under the umbrella of the Department of Justice, probably the Government Department most likely to be the subject of complaints to human rights and equality bodies.

There is an opportunity now to revive the work of the two bodies in the form of the new Commission and, with that, to breathe new life into the Joint Committee with the NIHRC and into the concept of a new shared space of human rights protection for the whole island of Ireland.

But if the new IHREC is to succeed, it will require robust independence and an end to political interference, beginning with the appointment of the new Chief Commissioner, which should be done by the same independent selection committee that chose the Commission members. The new body needs to be taken out from under the umbrella of the Department of Justice and it will need a substantial increase in funding and in staffing to carry out its increased functions - or even to carry out the functions that were performed by its precursor bodies.

That may be a tall order, but it is essentially what the Irish Government committed itself to 15 years ago in the Belfast/Good Friday Agreement and it is time they delivered on that commitment.

# Human Rights and Equality Commitments 15 Years On:

## "From anticipation to frustration"
## Patricia McKeown, UNISON

**Synopsis:** Patricia McKeown, Regional Secretary of UNISON and Co-Convener of the CAJ-UNISON Equality Coalition reflects on the contribution of civil society to placing equality and rights at the core of the Belfast/Good Friday Agreement and the rollback on the implementation of these key equality provisions fifteen years on. Drawing on the inspiration of Colombian civil society seeking to mainstream equality and rights in their own peace process whilst continuing to be targeted by the regime, Patricia argues civil society here need to retake the process to ensure these commitments, so central to the Agreements promise of a safe, equal and stable society, are actually implemented.

It has been a long haul so far and yet there is still a long distance to go. If I and my colleagues have learnt anything from these decades of struggle it is one step forward, three steps back. We must keep retreading that ground so I'm not pessimistic at all. I won't cover the period of the 1960s-80s as it has been covered by previous speakers but rather I'll go straight to the ceasefires as it seems a relevant place to start in terms of the possibility of a peace agreement being real.

UNISON and its sister-union IMPACT have always worked in close coalition with CAJ. We took it upon ourselves to initiate a unique and historic conference in mid-1990s which brought together the trade union movement, loyalist and republican prisoners', government representatives and a spectrum of civil society, including the genesis of

today's Equality Coalition. The idea was to have a conversation about the future, and what we aspire to. The keynote speech at this conference was from Mary Robinson who talked about decommissioning mindsets and a real discussion around the issue of decommissioning of weapons. Decommissioning of mindsets was, to her, one of the most significant aspects of peace-building.

There was massive work going on behind the scenes about what the tools for equality might look like. Professor Chris McCrudden developed what would become the statutory equality duty in section 75 of the Northern Ireland Act 1998; which was developed in forums and seminars like this. There was a serious contribution by civic society as a whole which reflects the fact that we were taking our responsibility seriously regarding the peace process.

In 1998 there was a significant conference in the Stormont Hotel, jointly convened by CAJ and UNISON at which Mary Robinson, at the time UN Commissioner for Human Rights spoke. It's worth recalling the aspirations of some of the most committed activists at the time:

- Joanne Vance, representing Making *Women Seen and Heard* said: "*Women had a big role in making the peace process come about and will continue to work hard to see that democracy and human rights stay at the heart of our peace process."*
- Patrick Yu from NICEM reiterated the basic principle of equality: "*which recognised difference, diversity and respect disadvantaged position of groups. Equality insists on the empowerment of disadvantaged communities*."
- Kathy Conlon was a health worker and a member of UNISON who was affected by the Thatcherite push to privatise. Cathy was part of the UNISON versus Down Lisburn Health Trust Judicial Review on the failure to apply the Policy Appraisal and Fair Treatment (PAFT) guidelines, which preceded section 75: "*I'm here to say worker's rights are human rights and we are looking for the support of men and women, catholic and protestant who understood that fair employment is right of all citizens."*
- Terry Enright, who sadly is no longer with us, said: "*I believe the whole equality agenda is central to progress of the Assembly I also believe that contained within the whole concept of Policy Appraisal and Fair Treatment is treating people as equals*."
- Billy Mitchell, also sadly no longer with us, said: "*We've lived in a society with a hierarchical society like a pyramid. If the working class nationalists lived in the basement of that structure, the working class unionist lived on the first floor. The Good Friday Agreement and particularly the equality agenda gives us an opportunity to level the playing field, it gives working class communities the chance to get off their knees and climb the stairs to the top floor*."
- Monica Wilson on behalf of Disability Action, said: "*I know we're an unlikely alliance. However, what brings us together is the common agenda of equality and being contributing citizens here. I think the agreement will move us towards that."*

All of these were legitimate hopes and aspirations and many of them are still unfulfilled and are equally legitimate today. We owe it to them, we owe it to the people who went

before them, we owe it to the dead and the survivors in our society and we owe it to ourselves. As such this is a very timely conference, a very timely stock-take of what has happened since.

The exercise I got the most satisfaction from and is still valid today was changing the provisions of the *Peace I* money coming from Europe. In coalition with a large number of women's organisations and CAJ, we went about ensuring the inclusion in the first round of peace money, of policies on fair treatment and that it would be legitimate for women to be centre-stage in peace support. We got that.

One example is a year-long project with the National Women's Council of Ireland, Women's Support Network (NI) and Derry Women's centre and UNISON. In the course of the year this project uncovered 400 different women's groups and organisations across the 12 border counties. The significance of this was that every one of the sessions involving those women identified the needs of rural women, of urban women, of addressing poverty and isolation. People felt they might be addressed and represented by peace agreement. This cumulated in a two-day conference in Cavan which had in attendance the Irish and British governments and involving our own politicians and civil servants from all jurisdictions. Promises were made to the women present, promises which have not been delivered on.

We do not cease in engagement with ourselves and wider civil society, which is why the membership of Equality Coalition and Human Rights Consortium has grown in last number of years. In 2003 we took a moment to review where we were, we had gotten section 75 and we hoped some things would have worked out for the better. We saw improvements such as recognition of health inequalities. However, it is still very hard to confront discrimination. Some find it easier to talk about 'working together', working towards 'good relations' and a 'shared future' but it is a real problem that the dominant theme of sectarianism is still being pushed at all levels and sectarianism is on its hind legs in 2013. This quote from Chris McCrudden sums it up: "*If inequality is not tackled, sectarianism will not be tackled, community relations activity is built on sand if inequalities still persist*."

That argument is now dominating equality and the strategic approach to equality. We are now in dangerous place where 'good relations' can be used as an excuse for discrimination which was never the intention of any of the groups involved in this process. Here, we see the Equality Coalition highlighting the government's great resources in the likes of public procurement and how we could use it more effectively in terms of addressing disadvantage. Three years later (and this is an example of rollback) after intensive work by civil society we get government policy guidelines, set out by the Equality Commission and launched by Peter Robinson who was Minister of Finance at the time. However they are not implemented and may as well not exist!

One of the things I mentioned in recognising inequalities was health inequality and in 2001, the Department of Health in the first Programme for Government said that they will have to tackle inequalities. In 2002, following enormous participation from wider society we have *Investing for Health* which Sir Donald Atchinson described as the 'best policy document in English-speaking world' that he has seen. However 12 years later the Chief Medical Officer says that health is worse in deprived areas in Northern Ireland and

that inequalities still exist. To put in short hand we now have the most disadvantaged and dispossessed people in Northern Ireland with *lower* life expectancy than they did in 1998 at the time of the Good Friday Agreement. The same groups, particularly the long-term unemployed are *more* likely today to face premature death than in 1998 and the growing suicide rates are topped by people in long-term unemployment (70%). If that is not rollback then I don't know what is.

Recently we met with OFMdFM and we said "*look, all the messing about, all the lack of political will, all promises made in the Agreement, you must do something about the fact that our people are dying in a Peace Process and they're dying from inequality, and inequality is a preventable disease*." In the last two weeks we again met with the First Minister and deputy First Minister. When we came to equality and human rights the First Minister dismissed the Good Friday Agreement and dismissed the Bill of Rights saying there was no support for it from amongst his constituents (despite evidence to the contrary). He then said there would not be a Single Equality Act and particularly stressed that this was because his people were not wedded to all of the anti-discrimination laws. Now we asked the First Minister are you not the First Minister for gay people, women, disabled and everybody else susceptible to discrimination? He replied I am also the first minister for the opponents to those things. So it would appear that the opponents of human rights now dictate the agenda 15 years after the Agreement!

So that brings me to my conclusion - Belfast and Bogotá. It is no coincidence that the Colombian government are speaking at a conference in Northern Ireland next week. A different set of Colombians have been on this island this week. They are the *Patriotic March* and they represent the rural poor, the indigenous people, the trade unionists, the academics, the students, the women's movement – everyone in Colombia who wants peace. But they are also the key group of people who are murdered, disappeared, imprisoned. The UN says that 96% of those things happen because state wants it or the state colludes in it. Why are they here? Last November something unique happened, it took two years in the making but a cross-party delegation from Northern Ireland at the invitation of *Colombians for Peace* went to Bogotá and to spoke to government, trade unions and to civil society, to see if there were lessons which could be learned from our peace process. I was very proud of the fact that all of Northern Ireland political parties spoke with one voice.

They said we need a ceasefire for a real peace process and inclusion for a real peace process. Civil society must be safe and allowed to participate, the political opposition must be protected and you need equality and human rights at the core of the peace process. All these things said unanimously to the Columbian government and the press everywhere we went. That created quite a stir in Colombian society. The Patriotic March were with us here in Ireland last week then when they got to London they were joined by Colombian government uninvited, in the House of Lords. The Colombian government also turned up uninvited last night in the TUC reception. Back home, the word in Colombian press is that the Patriotic March are in Ireland/UK funded by FARC. In fact, their trip, like the Justice for Colombia group, is funded by trade unions like UNISON and UNITE etc. This is what happens when power meets the demand of ordinary people for equality and human rights and vested interest does not want that to happen. Our experience does not look like Colombia. Consider that the number of Trade Unionists alone killed in Colombia in the last ten years equates almost to the entire death toll in the

Northern Ireland conflict and you get a sense of what is happening. We are in this rollback position due to the absence of political will blocks us moving forward. We are civil society-our lives are not at risk. They will go back home and they may live or die. Some we have already met are already dead.

So there is no stopping us reaffirming what we have said consistently all the way through, before, during and after the peace agreement that if equality and human rights are integral to what peace is all about then there must be implementation and involvement. The only way we will be a safe and stable society is to uphold these commitments. Certainly UNISON supported the GFA and devolution and have tried not to be overly-critical of our own political system because we wanted it to work. We tried not to be overly-critical of the Equality Commission because we desperately wanted it to work. But where the opponents of equality and human rights and an equality enforcement body advocate the same rollback it is time to speak out. The Equality Coalitions and Human Rights Consortiums have the ability to work together. It's the people's peace process but perhaps we are guilty of handing too much over to the politicians. It's time to take it back.

## Policing, Justice and Community 15 years on:

## Policing 15 Years On:

### Mary O'Rawe, former Chair of CAJ

**Synopsis:** Mary O'Rawe reflects on the implementation of the recommendations of the Agreement-mandated Independent Commission on Policing (Patten Commission) 15 years on, noting that whilst there has been change and progress on many levels, some key recommendations were not taken forward and there has also been a rollback on commitments.

Policing has been a touchstone issue throughout the conflict and getting policing right was viewed by many as, essential to the peace process. A lot of time, effort and money has been put into the reform process undertaken on foot of the blueprint provided Independent Commission on Policing in 1999, so, in many respects it should be a success story. And there has been palpable change and progress on many levels leading to working relationships, practices and levels of engagement that many might never have thought possible. On the other hand, much change has been focussed at an administrative compliance and managerial level, which has not countenanced the full extent of fundamental change necessary to create transformed policing arrangements at a much deeper level. Creative conversations have never really been had at a societal level, as to what policing is and what it could be reforms that have taken place have made a difference. But there has also been rollback.

According to one Patten Commissioner, the report was not just cherry-picked. It was gutted. Demands for change in key areas of policing and policing governance have not

been delivered upon. Promises have been abandoned and valid criticisms both within and outside the PSNI of how the change process has been conducted and the downsides of what has, or has not been delivered, not brought to light. It is important to ask why that has happened and what are we afraid of. There is certainly a sense that criticising reforms to policing was actively discouraged at many levels as 'anti-peace process.'

On the institutional reform side many recommendations have been followed through and boxes have been ticked on the vast majority of 772 technocratic performance indicators. However, the more radical governance proposals of the Patten Commission that have not been followed up. Despite the government's promise not to cherry pick, at the very early stage of the implementation of Patten recommendations, this became a process which continued to privilege the public police while losing sight of the some of the broader implications and imperatives of effective policing. The NIO and other government forces aligned to produce an implementation plan, very different from the original recommendations. This was the start of the claw-back.

The Independent Commission on Policing was clear that the core business of policing reforms should be human rights. The way of making this happen is by knowing better what good policing is and what good policing arrangements are. Inclusive process and respect for different needs and expectations is key. However, successive Implementation Plans eschewed consultation with the broader community and focused on safe and highly risk-averse ways to achieve outcomes. Draft legislation, even hundreds of amendments (and further pieces of substantive legislation) later, fell far short of what Patten had envisaged. Radical initiatives which could have broadened ownership and cemented trust in the newness of policing arrangement were largely cast aside. The Patten team's exhortation to develop new models to achieve security governance and to go beyond the police in terms of policing were poorly understood and, to this day, remain largely unassimilated.

Policing on a broader level with a number of different actors was necessary, because policing is also about prevention, housing, parenting, etc. The process of policing has been essentially rebranded by and handed back to white males. That, in itself has perpetuated a very male view on what policing is and what it needs to be. There is a need to start thinking what society really needs and how that can be put in practice. The State has continued to colonise the policing agenda and turned the *Policing* Board into a *Police* Board focused on holding a police organisation to account in terms of narrowly drawn parameters of efficiency and effectiveness. There are very few women involved in the process and no evidence that any real regard has been given, since it was issued in 2000, to satisfying the requirements of UN Security Council resolution 1325 on Women and Security. There has been no real attempt to engage with other ways of taking a 'policing', as opposed to a 'police', agenda forward. Devolution of policing has not presaged or given indication of any new beginning or attempts to redress the roll back.
Meanwhile policing at the same time has been allowed to remain overly compartmentalised. Institutional silos are in operation and we lack sufficient cooperation between the different bodies involved in the policing endeavour. There has been a recent amalgamation of different and reasonably ineffectual bodies to create new revamped Policing and Community Safety Partnerships, but many difficulties remain as to what these bodies can address given their remit, resources and power base are highly circumscribed.

Another major difficulty is reflected in MI5 taking over responsibility for a highly charged and controversial aspect of policing, creating, in the process, a further accountability gap that has not been addressed. OPONI's powers remain constrained in terms of ability to deal with retired police officers, soldiers, agents etc. The emerging story of collusion and the ability of a failure to address the past to destabilise the present is still insufficiently countenanced in how policing and other justice bodies have responded to legacy imperatives.

There are a wide range of other issues which evidence that a holistic transformation process grounded firmly of respect for human rights is still some way away. I don't have time to address any of these hugely complex issues in the detail and with the sensitivity they deserve. The issues are myriad: from the use of tasers, to the issue of effective accountability for past and present wrongdoing, the ongoing colonisation of policing evidenced by the State being firmly in control of policing to the detriment of wider societal ownership and engagement in the co-creation of a safer society, the issue of the annual policing budget still being hugely police focussed and not being allocated to real centres of need that might be doing enormously good work outside of the police organisation itself.

This has been a gallop through the fact that rollback has occurred at very many levels of the policing reform experiment of the past 15 years. The Patten package had its own gaps and weaknesses, but attention has been focussed on simply trying to reclaim Patten – never mind go beyond it. Overall, transformation of policing in Northern Ireland has still a very long way to go.

## Policing, Justice and Community 15 Years on:

# The State and community control

### Fiona McCausland, community activist

**Synopsis:** The 1998 Agreement contained provisions on disarmament and the 2003 Joint Declaration stated an 'immediate, full and permanent cessation of all paramilitary activity' was required. This speech however questions the extent state institutions and actions are currently actually strengthening those paramilitary structures which are unreformed and the consequent impact of cultures of control of affected communities. A distinction is drawn between the issue of ensuring individual ex-prisoners and other ex-paramilitaries are not excluded from employment and civic society, and the separate matter of effective state engagement with those Loyalist paramilitary structures which continue to be active. Drawing attention to the most disadvantaged communities having borne the brunt of the conflict the speaker also focuses on the unimplemented framework in the agreements– especially the Bill of Rights –being needed as much as ever to tackle socioeconomic inequality.

When the Good Friday or Belfast Agreement was signed in 1998, now over 15 years ago, it appeared to promise a better future for all. Although copies of the Agreement were distributed to every household it probably wasn't widely read. The people had welcomed the paramilitary ceasefires of 1994 and although the resulting peace was fragile the Agreement was accepted as the next step leading to real normalisation. The Agreement was accepted by a huge majority of voters who viewed it as signalling the end to all violence and intimidation and the opportunity for a new economic beginning for Northern Ireland. There would be a new start for the Country founded upon equality and human rights.

All knew that it would take time to heal wounds and create trust but no one would have believed that 19 years on from the ceasefires and 15 years on from the signing of the Agreement that the same areas which had experienced disadvantage and poverty before the troubles would still be as badly off after they had supposedly ended. These areas include West Belfast, Shankill and Brandywell. Most of the worst disadvantaged communities, are in nationalist areas. No one thought that 19 years after the ceasefires that paramilitary group structures would remain intact and that young people would still

be recruited into these organisations. What happened the dream of a real peace and a brighter economic and social future? Why is sectarianism on the rise and why are communities still divided by peace walls? Why can't the Northern Ireland Executive at Stormont deliver what the 1998 Agreement appeared to promise?

**The Troubles**

The Troubles can have a number of start years depending upon your political viewpoint but generally it is taken that 1969 began the period now referred to as the Northern Ireland Troubles. Opposing armies were formed and in true Northern Ireland style there were splits and divisions within the paramilitary groups leading to a proliferation of armies.

The British Army had been brought in early in response to the situation created by the "Battle of the Bogside" and the spill over of violence which rocked the communities of Belfast as a result. When Frank Kitson came to take over the command of the British troops in Belfast in 1970 he brought with him his theories on dealing with guerrilla warfare which he had developed in places such as Kenya where the enemy was the Mau Mau. Kitson was a respected soldier and his methods are still taught as part of military training in the United States of America. Kitson's theories involved extensive intelligence gathering from within the communities where the enemy originated and he advocated the use of "turned" guerrilla fighters and employed them against their former comrades. He also used gangs of armed men combining regular soldiers with ex enemy guerrillas to attack perceived enemy targets. Kitson's methods were put to extensive use in Northern Ireland and their use continued to escalate long after he had left the country.

By the end of the "troubles" it has been stated that all paramilitary groups had been heavily infiltrated, but worse, it has been generally accepted that State forces actively colluded with paramilitary members on all sides, who were working for them, and that murders of Northern Ireland citizens had been sanctioned, directed and encouraged. The State in effect had controlled aspects of the Troubles and it appears that over the years MI5, Special Branch and the Army all ran agents. These agents were allowed to commit crimes as long as they provided intelligence about their organisations.

However, despite the amount of intelligence held on the paramilitary groups they remained in existence and following the ceasefires and the signing of the Belfast Agreement they continue to exist and influence communities in the divided and disadvantaged communities across Northern Ireland. Today they remain virtually intact and new terrorist organisations have emerged to cast their shadow over peace as the current recession bites and the number of people facing hardship and poverty increases mainly in the working class areas. In the 1960's and 70's the paramilitary organisations were formed to defend their communities but today some have managed to redesign themselves and market their organisations as community development organisations. This is a role which appears to have been accepted by the political parties here.

I would state here that it is right that ex-combatants and ex-prisoners should play a part in the post conflict reconstruction of their communities and credit must be given to those who have impacted positively within their communities. I would also state that there has been a huge deficit in support for ex-prisoners in relation to health, employment and

discrimination. However no one should be given status or control within their community based purely on the fact that they held rank or were officers of some sort within an active paramilitary group.

It is only a few years since Martin McAleece, the husband of the then President of Ireland, was lobbying for money for Protestant communities in Northern Ireland which he said were controlled by Loyalist paramilitaries. He actually used the words, "controlled by". Only a few years ago, in 2008, I was told by one of the advisors to the First Minister that money had been promised to Loyalist paramilitaries in exchange for guns. The money would be channelled into areas where the paramilitaries had influence. This is not a unique peace building process, it has been used before! However when it is linked to community development processes it does have an impact upon how communities are controlled and it cannot be described as community development.

We are told that policing has entered a new era where we have policing with the community. For example it would not be unusual for the PSNI to now contact community organisations to discuss problems and allow the community group or organisation to look into the matter. But what is this community group or organisation? Is it perhaps a paramilitary group in a different guise? The police will know through their intelligence sources exactly who they are talking to and what they are doing! Is the community group the same paramilitary organisation which policed the community during the Troubles? How are human rights monitored under this regime?

**Social or Community Control**

So how does it benefit politicians to be able to exert social or community control. Well simply it is easier to talk to one person who has control within an area to get something done or implemented than to try and convince a whole community.

Firstly time can be saved and you don't really have to worry about democracy. Sure didn't we get the local community group or organisation to agree that the idea was good why do we have to consult with anyone else! Of course there is a price to pay for this decision making process with that being that jobs have to be provided and funded for those who can exert control within an area. This could mean diverting or channelling funding into certain areas at the expense of other disadvantaged communities. It could at times be that the so called community group won't cooperate and it might be necessary to support other suggested projects to get people on board again. It could be perceived that in Northern Ireland with its peculiar type of democracy that unionist politicians will favour loyalist areas and republican politicians will favour their own pet projects. If this is done by agreement of the major parties in power then it doesn't matter what the other political parties think.

What we end up with is engineered communities controlled by paramilitaries and the state controlling the paramilitaries and the state controlling the flow of money. The system can of course break down now and again but it can be fixed. This method can give people jobs and keep a sort of peace but in the end the communities derive no benefit from much need funding and necessary projects and initiatives are neglected. Unfortunately therefore the price paid is the on-going misery of the people living within the communities on both sides of the divide. I can see how it is easier to deal with one

person who has power over others. For example most people want to see threatening murals come down. It is certainly easier to pay one person and then you can go to that person and say, "can you get that mural taken down "or go to that person and ask "can you get that interface gate opened up for a few hours" In effect this gives the gate and the mural a currency value but even if the mural comes down another can be painted quickly. Some time ago I actually saw a gable wall which had painted upon it, a mural to go here, which meant that no one actually had to paint a mural to give that wall a currency value. This form of social control l view as totally negative within Northern Ireland society.

Northern Ireland needs a peace based upon human rights and equality. This is what he Agreement signed 15 years ago promised and this was the hope of the vast majority of people. Instead we have watched as tensions have risen and each year brings new flashpoints. We have witnessed a rise in violent incidents, not as bad as the times of the Troubles but the doubts are being sown. There has been an increase in sectarianism and its ugly sister racism. The fear is that inequality and poverty will see a further increase in violence and division as the Stormont Assembly fails to recognise the importance of human rights and equality. Was it not the lack of equality which took Northern Ireland down the dark road of the troubles at the end of the 1960's.

I believe that we need, as was written into the Belfast Agreement, is a Bill of Rights for Northern Ireland and specific to the needs of Northern Ireland. Politically this is not viewed sympathetically, to put it mildly, as various parties have found ways to knock it or just ignore the issue. I believe that the inequality which exists throughout Northern Ireland must be addressed and no more so than in the divided and disadvantaged communities throughout the Country which experienced the worst of the Troubles and continue to be affected by their legacy. For example:

- Over a third of all deaths occurred in five postal districts – all in North and West Belfast.
- Most deaths in just 15 postal districts across region.
- Same areas among poorest in Northern Ireland – such as Creggan and the Brandywell in Derry-Londonderry.

Conflict impacts most on the poorest people

- Half of all respondents in the Poverty and Social Exclusion Survey (2003) knew someone who had been killed in the conflict.
- Almost two thirds had witnessed violent events, such as a bomb explosion, gun battle etc.
- People living in social housing were much more likely to know someone who had been killed or injured than people living in other forms of tenure.
- 45-54 age group was most affected by the conflict, followed by 35-44 year olds
- Large-scale international studies show that the stress and anxiety of making ends meet is the main cause of the greater incidence of mental ill-health, especially depression and anxiety disorders, among women.
- Conflict related Post Traumatic Stress Disorder (PTSD) exacerbates this….while the anxiety of making ends meet means people are more likely to suffer PTSD.

- Maternal depression is a key risk factor for mental ill-health of young people – as is growing up in poverty.

I believe a Bill of Rights will give a framework by which contested rights can be addressed looking at how the lack of socio economic rights contributed to and exacerbated the past conflict. In Northern Ireland, poverty is highly concentrated– as was/is the conflict– and in the same areas. Now the Government is introducing a Welfare Reform Bill which will impact hardest in Northern Ireland. There are no allowances for Northern Ireland's unique position in that it is emerging from a thirty year conflict and this will have a devastating effect on our region. Currently the Northern Ireland Assembly is debating its passage and although later than the other the regions of the UK the Bill will come into effect in 2014. There are so many conflict related issues that affect how welfare reform should be implemented here but no one is taking these into account. Northern Ireland for example has the highest level of PTSD in the world and therefore we have a higher level of take up of Disability Living Allowance payments compared to all other regions of the UK. There is a proven link between poverty and conflict and the failure of the Northern Ireland Assembly to effectively address the socio economic issues will create fertile ground for further years of community tensions and sectarianism. I personally look with trepidation into a future where the introduction of the Welfare Reform Bill will plunge even more families into poverty.

This year Margaret Thatcher died. Thatcher was seen as the prime mover in the start of dismantling the Welfare state. What is happening today with welfare reform is beyond what Thatcher could have envisaged.

What is happening from my experience in communities is not a positive thing. The government is promoting paramilitarism in communities in a post-conflict society. There is a power exerted over communities that never existed before. The tactics have the hallmarks of Kitson – but the extent to which they have been implemented are surely beyond Kitson's wildest dreams.

While the Good Friday Agreement promised much it has failed to deliver or is it the politicians who have failed? People want to live in peace and also as free and equal citizens with dignity and respect. What we have is control of communities for political expediency and a reinforcing of paramilitary control and it is the most vulnerable within our society who continue to suffer the most.

## Specialist Session 1:

## Protection of Rights 15 Years on

**Kieran McEvoy**

This session, chaired by CAJ chair and QUB Professor Kieran McEvoy, discussed the status of rights protection frameworks envisaged under the peace agreements including the Bill of Rights for NI and the framework for the Irish language.

**Speakers:** Kevin Hanratty, Human Rights Consortium and Janet Muller, Pobal.

**Kevin Hanratty, HRC**

**Janet Muller, Pobal**

# A Bill of Rights for Northern Ireland

**Kevin Hanratty, Human Rights Consortium**

The obvious first question is – what Bill of Rights for Northern Ireland? It doesn't exist. It has been delivered. It hasn't been delivered 15 years after it was included in our peace agreement. It hasn't been delivered 15 years after we voted for it as part of the Agreement.

There has been much debate, consultation and campaigning on the need to deliver this element of the Agreement, yet unfortunately no delivery. So if we are talking today about 'Mapping the Rollback' from the Agreements human rights protections I would actually suggest that in relation to a Bill of Rights it is more of a case of searching for the roll out because there simply hasn't been any.

The CAJ paper presented this morning gave a fairly comprehensive overview of the various human rights elements of the Belfast/Good Friday Agreement. It already mentioned the main provision for a Bill of Rights for Northern Ireland in the 'Rights Safeguards and Equalities' section of the Agreement. This section states:

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

These words are very familiar to anyone who has been involved in the Bill of Rights debate over the last 15 years. For the hundreds of member organisations of the Human Rights Consortium, for the vast majority of civil society and the overwhelming majority of the public this reference in the Agreement clearly establishes an obligation to deliver a Bill of Rights for Northern Ireland- and therefore - it currently constitutes an unfinished element in the implementation of that Agreement. It is also important to point out that the Agreements commitment to a Bill of Rights doesn't simply end at this paragraph. As a peace settlement that sought to integrate human rights principles throughout the new arrangements - there are several references that give us a deeper understanding of the role a Bill of Rights was originally envisaged to play. So it's useful to go beyond the single paragraph and explore the other elements of the Agreement's text to reveal fully the extent to which the drafters incorporated a Bill of Rights into the checks and balances of that new system of governance.

**STRAND ONE**
**DEMOCRATIC INSTITUTIONS IN NORTHERN IRELAND**

**Safeguards**

5. There will be safeguards to ensure that all sections of the community can participate and work together successfully in the operation of these institutions and that all sections of the community are protected, including:
(b) the European Convention on Human Rights (ECHR) and any Bill of Rights for Northern Ireland supplementing it, which neither the Assembly nor public bodies can infringe, together with a Human Rights Commission;
(c) arrangements to provide that key decisions and legislation are proofed to ensure that they do not infringe the ECHR and any Bill of Rights for Northern Ireland;

**Operation of the Assembly**

11. The Assembly may appoint a special Committee to examine and report on whether a measure or proposal for legislation is in conformity with equality requirements, including the ECHR/Bill of Rights…..

**Legislation**

26. The Assembly will have authority to pass primary legislation for Northern Ireland in devolved areas, subject to:
(a) the ECHR and any Bill of Rights for Northern Ireland supplementing it which, if the courts found to be breached, would render the relevant legislation null and void;

So references to a Bill of Rights (BoR) being an integral part of the protections within the new institutions recur on a number of occasions at key points in the text. Not as a sole reference that can be taken or left on a whim, but as a key protection to ensure our government was acting in accordance with human rights standards - a key protection that hasn't been rolled out. In reflecting on a Bill of Rights and its importance, I think it's worth considering why it was placed as such a key protection in the new institutions of the Agreement and also look at how it might have operated in the last number of years.

Previous abuses of rights in the decades leading up to the Agreement obviously played a central role in motivating the negotiators to ensure a system of checks and balances within the new system that would ensure no such dominance or similar abuse of rights within future arrangements.

So in addition to the ECHR and a Bill of Rights, the GFA provided for a range of protections against one community dominance – principally based around Power Sharing between parties, including D'Hondt distribution of Ministries & Committee positions, votes completed by parallel consent or weighted majorities and a joint first ministry.

So in the first instance the new arrangements were designed to ensure power sharing across communities. The second layer of scrutiny was to be the human rights protections of the ECHR and the BoR. The CAJ review paper highlighted the uncertainty around how extensive a role the European Convention plays within Executive or Ministerial approval of policies or legislation except to say that a statement of compatibility is forthcoming

wherever needed. Further openness of this process would be useful in ensuring proper consideration of this particular protection.

The Bill of Rights doesn't exist so we can't comment on its implementation. We can however speculate and ask questions about how it might operate based upon the various rights which have been recommendations for inclusion in a Bill of Rights.

For instance - if we had a general equality clause that limited discrimination on any grounds –I don't think we would have seen decisions like the allocation of resources for housing redevelopments that largely ignored objective need - such as that at the site of the former Girdwood Barracks in Belfast.

If we had a right to social welfare it may have strengthened the hand of those MLAs who were debating the Welfare Reform Bill in their discussions with Westminster. Our MLAS only used the Special Measure for a Human Rights and Equality Committee for the first time since the signing of the Agreement at the end of 2012 – when a special committee was established at Stormont to look at the implications of the welfare reform bill. A right to social welfare could have given legislative backing to calls for amendments from all parties to the application of this law in Northern Ireland – taking account of local circumstances.

And finally if we had the right to an adequate standard of living it could have helped move forward with agreed frameworks across parties to enhance living standards by the development of an anti-poverty strategy. I think the potential of a strong Bill of Rights is immense. Some commentators might and have said – why do we need a Bill of Rights to ensure effective governance – that is what we have political parties for, why we have elections to hire or fire them from office and in addition we also have the cross community voting protections in the Assembly.

Leaving aside that a Bill of Rights is a normal addition to the protections in healthy democracies across the world – it has played a particular role in divided societies who want assurances of effective governance that goes beyond the political. Add to that our own circumstances where voting is usually dictated by community background.

The nature of our government in NI makes it even more essential that we would have a set of core common rights that every member of the Assembly was obliged to take account off and implement. This is not to say that a Bill of Rights would fundamentally alter the relationships at Stormont and create a solution to all the ills of society. However if we had a set of common values – in a Bill of Rights – that touched upon a range of issues affecting NI, everything from our recent problems of parades and symbols to housing and healthcare, that politicians had a duty – not just to protect – but actively implement and develop -then I believe it would add a significant positive dynamic to how our government operates.

At best it could help create positive cohesion regardless of allegiances and background and at worst it could allow political parties the wiggle room to do things they normally wouldn't do by virtue of the excuse of being bound by the legislation. So I think the absence of a Bill of Rights is more startling than we realise and the BoR was included for very good reasons.

I think we have lost sight of that and need to revisit its potential. We have a very particular form of government. Normal coalitions in ordinary democracies find it very difficult to cooperate and agree – our unusual arrangements, while essential, make that cohesion even more difficult. A Bill of Rights in my opinion, is therefore key to unlocking the full potential of the Agreement.

I want to finally turn to issues around process, 15 years on and no Bill of Rights. Why? Put simply – the political will does not exist. The British Government have not legislated despite receiving the advice from the NIHRC. Both the previous and current government have introduced road blocks along the way. The previous government delayed on implementing the NIHRC recommendations back in 2009 – instead putting forward extremely limited proposals for our BoR. That idea was quickly shown the road when 36,000 members of the NI public rejected their proposals in favour of a more robust bill.

When the Conservative /Lib Dem coalition came to power they had their own narrow debates about the future of the Human Rights Act and negatively sought to include our Bill of Rights process in a wider UK Bill of Rights. A project that was going nowhere fast. Again the public response was overwhelming with 60% of the submissions to that process coming from NI and saying two things.

(a) leave the Human Rights Act alone – it was also part of our Agreement and
(b) leave our Bill of Rights debate alone as well and let us get on with it.

Again this was effective and the final report recommended that nothing done within the UK process should interfere with the NI BoR process which was an integral part of our peace agreement. Finally the government have also been keen to revert to their classic excuse that there being no political consensus in Northern Ireland for a Bill of Rights. Unless I'm mistaken, the local political consensus came in 1998 when the Agreement was voted through in a referendum of the people – not of political parties. Where in the agreement does it say that this is provisional upon the agreement of politicians? It doesn't.

We have had crises in the past 15 years – decommissioning, devolution of policing and justice powers and others. These were elements of our peace process and yes there needed to be agreement between parties on the method of implementing these elements – but at no stage did that mean that the Government could abandon its duty to try and move the process forward. That is what we are currently seeing. Apart from the odd press statement or letter the British government are not acting in accordance with their role as a guarantor of the agreement by actively seeking its full implementation. Yes we want political agreement, but political parties should not have a veto on progressing a key element of the agreement.

Someone said to me very recently – '*When I voted for the agreement I voted for all of the agreement including specifically the Bill of Rights. There were issues that were hard for me to swallow like prisoner releases but I knew that as an entire package, taken as a whole the Agreement was for the greater good of our future society. It spelt out the type of society I wanted to be a part of. We were not allowed to vote for particular aspects of the agreement and leave others - yet that is exactly what our politicians have done, are being allowed to do – and that is what is being done with the Bill of Rights. The*

*agreement is being cherry picked and not implemented. It is absolutely shameful that we do not have our Bill of Rights.'*

I will finish now but I wanted to just close by reading you two things. One set of statistics and one quote. The statistics are from the polling that the Consortium has carried out over the last 4-5 years. People were asked whether they felt a NI Bill of Rights was very important, important, unimportant, very unimportant or neither. Consistently over a five year period over 80% of the population from all communities in NI said that it was either important or very important to have a Bill of Rights. Secondly those same groups were asked whether it was important to have a range of social and economic rights included in that Bill of Rights and then the support level rise consistently to over 90% across all communities. This shows massive community support for the concept of a Bill of Rights.

15 years ago we started a process. Civil society, the NIHRC and others began to ask people what they wanted their human rights to look like in a new Northern Ireland – in the new Bill of Rights they voted for. Hundreds of thousands of men, women and children made inputs and participated in a process to tell our politicians and government the rights they wanted for our future. Those voices have been ignored and a generation has grown up without the full protections that were guaranteed by our peace settlement. I believe that we see the negative effects of that every day in our communities, in our homes and in our society generally. The effects of not having the complete system of governance we were promised -15 years on.
I will finish by quoting one of the first paragraphs in the Agreement. This was part of the intro that set the rationale for the talks and the agreement itself.

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

# The Irish language and the Good Friday Agreement

**Janet Muller, POBAL**

Since the 1998 Good Friday Agreement (GFA), the Irish language community has been attempting to make definitive progress in the context of an altered relationship between the two parts of the island and the two governments (and Northern devolved institutions) which make policy for the language in the two jurisdictions.
Fifteen years on, it is timely to assess the current situation in relation to the commitments made to the Irish language in the GFA and the St Andrews' Agreements development in order to determine the best way forward for the language.

If the GFA is the basis for current Northern approaches to language development, it is important to note that whilst the document outlines certain duties in relation to the Irish language, it places all of these in the context of the signing by the British government of the European Charter for Regional or Minority Languages (ECRML).

Following the GFA, the British government did indeed sign and ratify the European Charter for Regional or Minority Languages (ECRML), recognizing Welsh, Gaelic in Scotland and Irish in the North under the most specific and potentially strongest of the Charter's sections, Part III. The ECRML has provided important status for Irish in the North in the absence of any other protective or developmental framework. However, as 'soft law' it cannot be enforced in the courts, and although the monitoring body, The Committee of Experts (COMEX) has made increasingly strong comments at every successive monitoring cycle regarding its implementation in the North, the ECRML provisions remain marginalized for a number of reasons. Firstly, the British government has selected the least number of paragraphs and 'weakest' options for Irish. Application of the provisions for Irish to date has been unfocused and lacklustre.

In addition, whilst the ECRML has proven inadequate to protect the Irish language, it has been used to provide a framework for the persistent linking of Irish language provisions with Ulster Scots, in spite of advice from the COMEX that this is inappropriate. In fact, this practice has increasingly driven devolved language policy since 2007. The failure of the UK government to deliver an agreed report for the Council of Europe during both the third and the current fourth monitoring cycle of the ECRML has highlighted the conflictual context in which the Irish language exists in the North. In its last report in 2010, the COMEX made clear criticism of the application of the ECRLM for Irish, and in a number of instances, it revised its previous judgement that commitments under the Charter had been met. It called for further information on how implementation had been improved by the time of the fourth monitoring cycle. However, not only has the UK been unable to report back on any of the ECRML clauses relating to devolved matters, even in respect of 'reserved matters' and the UK's overall responsibility as the state party and signatory of the ECRML, its Fourth report runs to 60 pages, some 300 pages less than the previous UK report. This calls into question the commitment of the State party to the monitoring process.

In spite of the GFA and the ECRML, the British government has continued to exclude the Irish language from the list of languages recognized for citizenship purposes, noting that since it is in compliance with the Welsh Language Act 1998 and the Gaelic language Act

2005, it has no legal duty to include Irish at this point. The Irish language is also excluded from UK broadcasting legislation. Strong representations were made during consultation to the UK Communications Act 2003 and the BBC Royal Charter 2005, but these were ignored. The historic suspicion of the BBC towards Irish still impacts on Irish language provision from the main PSB broadcaster, and provision for Irish is now increasingly linked to Ulster Scots programming, in spite of apparent confusion as to what exactly this is. The technical difficulties surrounding access to TG4 throughout the North have to some extent been resolved, although arguably, there is an inherent inadequacy in transferring UK responsibility for Irish language programming to an Irish state broadcaster. This is especially so given that although the Irish Language Broadcast Fund has been established, its positive performance in contributing to Irish language programming in the North has not led to a secure funding future. Its current £3 million budget will expire in 2014-15. This shows that small gains made post-GFA have not become mainstreamed.

Arising from the GFA, the Equality Duty, Section 75 was introduced. Language was not included as a category and although the Equality Commission has stated that it has no expertise on language matters, its interpretation of Section 75 has been consistently flawed, tending to the view that since Irish speakers are more likely to be from a nationalist background, that positive actions to improve the position of Irish constitute a form of discrimination against those from a unionist background whose sensitivities must not be disturbed by seeing or hearing the Irish language. Strangely, by this logic, the Commission's approach should mean that failing to remove the obstacles to the use of Irish in public life constitutes discrimination against nationalists. This does not appear to feature, however. The issue of Section 75 interpretation is one which POBAL has brought to the attention of the Council of Europe Committee of Experts on the European Charter for Regional or Minority Languages and the Advisory Committee on the Framework Convention for the Protection of National Minorities. Both bodies have specifically, formally reiterated that provision made for Irish speakers under these international instruments does not constitute discrimination against the users of the majority language.

There is impressive vitality and cohesion in the Irish speaking community in the North. Efforts by the Irish language community to favourably influence British policy and planning on the language in the period following the GFA culminated in well-developed proposals for Irish language legislation and an historic commitment within the St Andrews Agreement that the British government would enact an Irish Language Act. In spite of the unequivocal nature of the promise, the overwhelmingly supportive response to the proposed legislation across two government consultations was sidelined to allow the British government to use the Irish language as a bartering chip in devolution negotiations. This is shown by a statement from the then Secretary of State, Peter Hain.[1] In it, Hain tells the leaders of the DUP and SF that if they do not act on the deadline for re-establishment of the Assembly, that, 'The Assembly will close down, the salaries will stop, the allowances will stop...The Irish language legislation will be taken forward at Westminster.' DUP spokesperson on Culture, Nelson McCausland,[2] a staunch opponent of Irish language legislation, notes, 'The message is that if unionists go into an executive and

[1] Hain, P., 20 March 2007, Press release from Secretary of State's office.

[2] Nelson McCausland was made third DUP Minister for Culture, Arts and Leisure in June 2009 and stayed in post until May 2011.

the assembly is operational the Irish language act will become a devolved matter and unionists can veto it. Once again Downing Street and the Northern Ireland Office have politicised the Irish language'[3].

POBAL, joined by human rights bodies, contended that refusal by the devolved institutions to meet commitments did not release Britain from its international treaty obligations, a point subsequently accepted by the United Nations Council on Economic, Social and Cultural Rights (2009), by the Council of Europe Committee of Experts on the European Charter for Regional or Minority Languages (2010), the Advisory Committee on the Framework Convention for the Protection of National Minorities (2011).

The opposition of the unionist parties, not simply to Irish language legislation, but to the language itself had been well advertised. The DUP manifesto for the February 2007 Assembly election contained a commitment to oppose the Irish language Act, and media briefings consistently attacked the language and the community. See for example, *The Irish News*, 24 October 2006, Roy Garland, *Changing Times signals the end for the Rhetoric*; *The News Letter,* 14 November 2006*, Scepticism over Government Offer on Ulster Scots; The News Letter,* 17 November 2006*, The Trojan Threat of the Irish Language Act; The News Letter,* 20 December 2006*, Allister broadside attack on Irish language Bill document.*

When a date was subsequently agreed for the entry into a new Assembly, Ian Paisley, then leader of the DUP, and newly nominated First Minister for the North, said, 'The claim that an Irish Language Act will be forced upon us is now gone forever…No Assembly the DUP lead will pass such an act.'[4]

Arguably, the situation was worsened by the decision by both Northern nationalist parties from 2007-2011 to allow the ministry responsible for the language, Culture, Arts and Leisure to be taken by the party most hostile to the Irish language, the DUP. This further marginalized the Irish speaking community within the political process and the consociational institutions. Perceived political protectionism, secrecy and ineffectiveness in the nationalist parties eroded confidence and the failure of the Irish government and the North's nationalist parties to challenge effectively the broken British promise has reinforced the use of the Irish language as a political football within the devolved institutions. In 2011, a nationalist Minister, Carál Ní Chuilín of Sinn Féin was appointed to the Culture Ministry. This has resulted in a far more positive approach to the language, including the publication of a draft strategy for Irish and the initiation of a learners' project, Líofa 2015. However, although the Minister has said she will put proposals for the Irish Language Act to the Assembly at some unspecified time in the future, the commitment has not been included in the Programme for Government, and any such proposal at a devolved level will require cross-party support. For many observers, pressure must be brought to bear on the British government to fulfil its commitments rather than allowing the Assembly to further delay progress.

[3] *The News Letter*, 14 March 2007b, *Act is a shillelagh to coerce unionists into Stormont,* article by Nelson McCausland, DUP spokesperson on Culture.

[4] *The News Letter*, 2 April 2007, *Next ombudsman must be 'neutral' warns DUP leader.*

Not only has the St Andrews commitment to legislate for Irish been sidelined, but legislation that represents an unjustifiable restriction on Irish remains. A 2010 Judicial Review of the continuing operation of the 1737 Administration of Justice Act (Language)(Ireland), which effectively places a ban on the use of Irish in the courts was robustly defended by barristers for the British government, and continues to this day, in spite of the findings of the Committee of Experts on the European Charter that in their view it is indeed an unjustified restriction.

Under the GFA, provision was made for the establishment of a cross-border body, An Foras Teanga (The Language Board), funded under an agreed proportional formula by both governments. The British government provides 25% of the overall budget for Irish and 75% funding for Ulster Scots, compared with 75% for Irish from the Southern government and 25% for Ulster Scots.[5]

An Foras Teanga, made up of two constituent parts, Foras Na Gaeilge (The Irish Language Board) and The Ulster Scots Agency is under the joint direction of the North's Department of Culture, Arts and Leisure and the South's Department of Community, Rural and Gaeltacht Affairs (renamed in 2010 as Community, Equality and Gaeltacht Affairs).

Although the effects of the current recession on Foras na Gaeilge's budget has been significant, it is the body's own proposals, spurred on by the two Departments, to end core funding for 19 Irish language organisations, seven of them in the North, which has aroused strong opposition in the past five years. All of the organizations, north and south oppose the proposals, citing 'irreparable damage to the language' as a result. Whilst the process towards the destruction of the organizations and the dismantling, at least in the North, of the Irish language infrastructure has been delayed somewhat since the advent of the current ministers, it is not clear that it has been significantly improved. It is likely that a decision will be made on proposals from Foras na Gaeilge which the Irish language organisations have not seen, in June 2013. At present, rumours suggest that funding will end entirely for a significant number of the groups, with being given preferential funding all being located in Dublin. In effect, this will end the core funded Irish language sector in the North, including POBAL.

Unionist parties have considerable hostility to the Irish language and in particular to high profile and effective organisations. The challenge for nationalist parties is to recognise that the creation of effective approaches, including on an all-Ireland basis, will require appropriate support for the expertise and experience of NGOs working in the different circumstances of the two jurisdictions and greater flexibility in Foras na Gaeilge's funding arrangements than is currently being sought.

[5]The 2001 Census shows that of 167,460 people in the north with knowledge of Irish, over 75,000 list skills in reading, writing, understanding and speaking Irish. Catholics are more likely to have knowledge of Irish (22.2 %) than protestants (1.2 %). Those most likely to have knowledge of Irish are found in the younger age groups, (12-15 years, 23,8 %; 16-24 yrs, 16 %). There are 80 Irish medium schools in the North, and some 300 in the south. There are no Census figures regarding people with knowledge of Ulster Scots, North or South. However, the North's Department of Culture, Arts and Leisure has used the Life and Times Survey (1999) as a small sample indicator. 2,200 people were questioned. Results indicated that of these, 2 % indicated knowledge of Ulster Scots. Extrapolating from this figure, DCAL contend that there may be 30,000 people in the north with knowledge of Ulster Scots. Of the percentage in the Life and Times Survey, Protestants were more likely (2 %) to speak Ulster Scots than Catholics (1 %). People over 65 were most likely to have knowledge of Ulster Scots.

In respect of the Good Friday Agreement, then it appears that whilst many believe we are better off because the commitments were made, few believe they have been adequately fulfilled. POBAL has recently compiled a series of articles giving the personal views of key players in the Irish speaking community in a range of fields.[6] Published with the articles are the results of research the organization carried out in March 2013 amongst Irish medium educationalists. The research shows high levels of dissatisfaction with the way the GFA promises in respect of Irish have been fulfilled. 140 responses were received. General comments read, 'Barraíocht de dhíth go fóill' / 'Too much still needed'; 'Na gealltanas ó Chill Rímhin agus ón Chomhaontú Aoine an Chéasta a chur i bhfeidhm ANOIS!' / Implement the GFA and St Andrews promises NOW!'; 'Níl go leor dul chun cinn déanta' / 'Not enough progress has been made'; and, 'Tá sé in am Acht na Gaeilge a bheith againn' / 'It is time we had an Irish Language Act'.

Specific to IM Education, a number of comments were made: 'Níl an Ghaeilge ar chomhchéim i CCEA nó i Roinn an Oideachais' / 'Irish isn't on an equal footing in CCEA or in the Department of Education'; 'Cothrom na féinne a thabhairt don Ghaeloideachas ó thaobh pleanáil & áiseanna do' / ' Give fair treatment to IM education from the point of view of planning and resources'; 'Drochchoiriú na scoileanna faoin tuath' / 'The bad state of repair of schools in rural areas'; and also the following comment, 'Ceapaim go bhfuil siad seo ar fad an-tábhachtach ach nach féidir le múinteoirí/príomhoidí/scoileanna dearmad a dhéanamh ar an ndualgas atá orthu féin an Ghaelscolaíocht/Gaeilge srl a chur chun cinn ar bhealaí éagsúla' / 'I think that this is all very important indeed but that teachers / heads / schools cannot forget their own duties to promote Irish and IM education in various ways.'

Asked about the fulfilment of the GFA commitment to, 'faciliate and encourage the use of Irish in public life', 65% of respondents said they were 'very dissatisfied' or 'disatisfied'. 60% felt that the obstacles to the development of the Irish language had not been satisfactorily addressed. Our survey asked three questions relating to legislation, policy and strategy development. The first asked what importance a comprehensive, rights-based Irish Language Act has to the development of the language and to Irish Medium education. 90.7 % of respondents said that it was 'vital', 'very important' or 'important'. Of these categories, more than six times more people said the Irish language Act was 'vital' rather than 'important'.

The second of these questions asked what importance, '*a comprehensive policy and more developed understanding of Irish medium education within the Department of Education'* would have for the development of Irish and IM education. 93.56 % said it was 'vital', 'very important' or 'important'. Twice as many respondents felt this was 'vital' rather than 'very important'. 4.28 % did not answer the question. The final questions asked what importance, '*An active recruitment strategy with definite aims by the Department of Education to increase the number of pupils in Irish medium education'* has, and 93.56 %, the same percentage as in the previous question (although in a slightly different breakdown of emphasis) said that it was 'vital', 'very important' or 'important'.

[6] POBAL, *Cúig bliana déag ó Chomhaontú Aoine an Chéasta: An bhfuil na gealltanais i leith na Gaeilge a gcomhlíonadh? Tuairimí pearsanta ó phobal na Gaeilge. / Fifteen years from the GFA: are the promises made in respect of the Irish language being met? Personal views from the Irish speaking community*. April 2013, available on, http://pobal.org.gridhosted.co.uk/gaeilge/wp-content/uploads/2013/04/15-Bliana-D%C3%A9ag-15-Years.pdf.

In general, it is clear that there remains a high level of dissatisfaction in the Irish speaking community as to the progress being made in relation to the development and promotion of Irish and the perceived failure of government to fulfil its obligations. The longer this remains the case, the greater the danger that new generations will cease to remember the precise detail of the commitments, but will nonetheless experience alienation, frustration and marginalisation because, however hard they work, and however strong their determination, they will remain second class citizens because of the obstacles and disadvantages they face in using their language in everyday public life.

## Specialist Session 2:

## Equality 15 Years on

This session, chaired by TJI's Dr Rory O'Connell, also a board member of CAJ, discussed the status of commitments to equality protections and socioeconomic rights within the peace agreements including provision for an anti poverty strategy, the right of women to full and equal political participation and supporting young people from areas affected by the conflict.


**Speakers (left to right): Kate Ward, Participation and the Practice of Rights (PPR); Paddy Kelly (Children's Law Centre); Emma Patterson, Equality Coalition Coordinator, CAJ.**

## The Implementation of Socio-Economic Rights: Lessons in Accountability

**Kate Ward, Policy and Research Support Officer, Participation and the Practice of Rights organisation (PPR)**

Already today we have heard about the principles which came out of the Good Friday Agreement, I'd like to assess the situation today in light of the creation of these mechanisms which paved the way to bring about modest and reasonable change and address inequalities without attributing blame for past injustices. To do this I'd like to briefly go through some evidence that PPR's work specifically in housing[7]and more recently in terms of the right to work and from there highlight how far away we have moved from the principles discussed this morning. PPR's work here in Belfast is about putting human rights at the service of communities. It's about communities at the hardest edge of socio-economic disadvantage and inequality and supporting their use of international legal standards as tools to claim rights in housing, mental health and unemployment.

Communities like the residents of the Seven Towers flats in North Belfast, pictured above. It's about supporting those residents who live in these flats which are only really still standing because of the demand for and inequality in housing in north Belfast affecting the Catholic community. It's about holding government to account in terms of those rights. I'd like to discuss the patterns of governance which can be charted from the failure to implement the equality provisions and maybe use some of the evidence we've collected to give a context for this.

[7] For further information on issues relating to PPR's work on equality and housing, please see PPR's 'Equality Can't Wait' report (August 2013) which chronicles the failures by a range of government bodies to tackle religious inequality in housing across Northern Ireland, specifically in North Belfast. 'Equality Can't Wait' is available to view and download at http://www.pprproject.org/content/ppr-launch-housing-inequality-report

To begin I thought I'd maybe look at how actions from public authorities are showing a really deliberate move away from the *language* of Section 75 which places the obligation to show *due* regard to the promotion of equality of opportunity above that of showing regard to the promotion of good relations. Language which says that the latter must be done *without prejudice* to the former.

The Seven towers are in the New Lodge area of North Belfast which borders the city centre area of Belfast along with seven other areas. Of these eight, four are majority Catholic areas and four Protestant. Now, religious inequality in social housing has characterised itself differently for the two communities; in Catholic communities high social housing waiting list representation means that the need for new social homes is high whilst in Protestant areas, there is increasing need for urban renewal and regeneration.

Instead of allocating homes in the city centre on the basis of this need, in July 2011 the NIHE announced plans for a Belfast City Centre Waiting list which would see allocation based on a desire to create a 'shared space'. The plans had come about because of the economic downturn and the potential within the housing market to acquire cheap and often unadapted apartments.

These plans deliberately went against terms of equality duty. The proposals infer that if the NIHE continued the current process of allocating homes the majority of homes would go to Catholics since majority of people on waiting list are Catholic. In essence, what we had was a push for a *shared* future which doesn't tackle religious inequality and which excludes families, the elderly/infirm and the disabled.
The accountability structures set up to guard against this happening include:

- The Equality Commission, who didn't respond to the consultation. When we expressed our concern around this we were told that the ECNI have criteria for deciding whether or not to respond to consultations and in this case they chose not to.
- Belfast City Council has a Strategic Policy and Resources Committee whose mandate is the promotion of equality. The cross party political structure were briefed by the NIHE and submitted a response welcoming the proposal unreservedly.
- NI Assembly – Social Development Committee told us that they were aware of the proposals but it is our understanding that they never asked to be briefed on it by NIHE or DSD.
- Political representatives; in the areas which were to be impacted or on the NIHE Board- all were contacted and offered a briefing, none took up the offer. One MLA wrote a newspaper column criticising policy but did nothing more. Protest politics did not translate into the effective and legal exercise of political powers.

The next issue I'd like to discuss is accountability. Section 75 and the Good Friday Agreement were designed to open up very straight lines of accountability. By naming the groups facing inequality in the categories of section 75(1), they inserted a rigid requirement that public authorities *look* at women, *look* at young people, *look* at people with disabilities, *look* at Catholics in housing stress. By naming the issue, it was no longer to be *invisible*. By defining it in law it was intended that these issues no longer become

subject to political bartering or arbitrary political prerogatives; the obligation to tackle it was now a legal one and as such could be held to account. Girdwood has been described as a 'windfall' site in North Belfast. 27 acres and £231 million of public monies. Although the controversy seems to focus around housing, Girdwood represents the potential for much more. The potential to address long term unemployment for example is also within the remit of government bodies. In fact the areas which border Girdwood are amongst the most statistically most deprived in Northern Ireland across a range of indices. Section 75 of the Fair Employment Act for example allows government bodies to ring fence jobs for long term unemployed.

In May of last year however, the photo on the left was taken along with an announcement that an agreement had been reached. The tackling of inequality in housing has been presented as subject to cross community agreement rather than as required by law.

The NIHE identified that by 2012 95% of projected housing need in North Belfast was to be in the Catholic community – despite this the preferred option of the DSD is 'shared housing'.

In fact quite remarkably the document in which this calculation of projected need is done is the Final EQIA for Girdwood which states that tackling this inequality is 'divisive' and therefore, apparently, the state was unable to act in accordance with the law.

The above photo is of residents in North Belfast. The women are Brenda, Roisin, Marissa, her daughter Luighseach and Angie and they have spent the last six years campaigning for the law to be implemented. In July of last year they wrote to the politicians pictured above and asked them how the plan they had signed off on would tackle the inequality residents like them were facing. Remarkably, not all of the politicians even responded, of

those who did, the response paid cursory reference to religious inequalities. A number of political parties emphasised their previous record on championing housing equality – but again the issue of actually exercising political power in accordance with the spirit and word of the GFA remained unanswered.

This leads onto an analysis of participation and linked to that – the best use of public monies. Section 75 of the NI Act and the Good Friday Agreement are about more than naming inequalities and tackling them. It's not often that I'd quote Meryl Streep in a conference setting like this, but last month she paid tribute to PPR Founder Inez McCormack in New York and as she read from Seven, in which she had played Inez. I thought the notion of participation and its inextricable link to the Agreement was explained really well. She said that the GFA was *"about a provision requiring any public policy to be tested with its impact on the most invisible and that that requires that the most invisible be involved in that measurement."* For this participation to be meaningful, it must be informed. Which is where you run into more problems.

The Seven Towers that I mentioned earlier were thrown up in the 60s. They are in serious disrepair. Residents have since 2006 been identifying problems with poor heating, sewerage coming up the sinks, damp and mould which causes respiratory problems in children, no play facilities, pigeon waste on the landings...the list goes on. They have presented these issues as human rights concerns and collected robust data on the extent of the problems. The response by the NIHE has varied from flat out denial of the existence of the problems to blaming the residents to offering short term fixes which continue to leave residents in unacceptable conditions. In 2009, however, the NIHE announced that they planned to spend £7 million on the Towers, £1 million per block. Their plan was to put PvC cladding on the outside of each tower. The plan was about preserving the brickwork (which is literally crumbling – in fact last year a balcony literally fell off the Towers), it was not about dealing with the issues identified by the residents. In 2011, PPR worked with the residents to conduct a Human Rights Budget Analysis of the NIHE's plans to clad[8]. It examined the proposals in terms of whether they were capable of progressing their human right to adequate housing and tackling inequality and thus whether the plans represented appropriate use of public monies. This work received commendation from international experts. It was dismissed out of hand by the NIHE.

It is extraordinary the effort that public authorities will go to frustrate attempts at participation. Nowhere is this more the case than in terms of trying to get information so that you actually can participate. In order to complete the budget analysis on the cladding we had to submit multiple Freedom of Information (FOI) requests which delayed and frustrated the process of examining the proposals. To examine the tender for the cladding itself, for example, took 14 months, three requests and one appeal. By this stage, the proposal was well advanced. Residents don't need pyrrhic victories confirming their righteousness but leaving them in poverty. They need the change that was promised for, and voted for, in the GFA.

The last thing I wanted to discuss with you today is around data collection. When it comes to information being collected about equality, it is actually quite appalling – public

[8] http://www.pprproject.org/sites/default/files/BUDGET%20ANALYSIS%20JUNE%202011.pdf

authorities in many cases, either don't collect the information (which they are legally obligated to) or refuse to release it which frustrates the accountability process. In fact, I remember seeing in the appendix to an old version of the Equality Commission's Guidelines for Public Authorities on how to implement section 75, an interesting table which showed which public authorities currently collect which data by section 75 categories. The gaps in data collection were really astonishing. I haven't seen any further examination of who collects which data but it's hard to configure that this stems from a legal obligation, it's not something which is optional.

In our work in both housing and unemployment we are seeing how these failures pan out. I'll give you two examples – the NIHE were redesigning their calculation for how they decide where to or for whom to build social homes back in 2010. As you'd expect this has massive ramifications for many people and groups experiencing inequality. PPR requested data relating to the social housing waiting list broken down by section 75 category to establish how many people would be impacted and we were told that the NIHE didn't have this information in the form requested and to get it we would have to pay £33,000.

Last month is a more recent example, this time of a refusal to release the information. The University of Ulster are planning a £250 million investment in north Belfast with their new campus. PPR submitted a FOI request asking for information relating to how the University planned to ensure it promoted equality, specifically around what measures it would take to ring fence jobs and apprenticeships for the long term unemployed in north and west Belfast. The university refused to release this information, stating that the public's right to know how they would provide opportunities for long term unemployed people was outweighed by the university's 'commercial sensitivity'.

It is scandalous when you come to think about the response of public authorities to data collection by section 75 category. Especially when you think about how much crossover there is between the use of equality and human rights tools and good or evidence based decision making. The equality and rights aspects of the GFA are there to serve a purpose – outcomes. The rationale for their insertion into the GFA is about better outcomes for disadvantaged communities.

It's when you think about this that comments like that which I read recently is all the more stark. Late last year, a DSD official was giving evidence to a Stormont Committee about Welfare Reform and when questioned about data collection and section 75, he said that in some cases he felt the collection of section 75 data actually constituted an infringement of a person's human rights!!
His remarks went unchallenged by our political representatives who have a statutory duty to scrutinise public policy and implementation – and indeed in many respects are part guarantors of the GFA.

**And to sum up....**

Accountable participative shapes of governance as envisaged by the GFA is something which is entirely doable. Good participation leads to good outcomes, we've seen it in mental health were the participation of service users and carers in the Belfast Mental Health Rights Group led to the implementation of the Card Before You Leave appointment card system across Accident and Emergency Departments in NI. 160 people

every month who are in mental health distress now get follow up appointment and support which they would otherwise not have, because of this.
One example of good governance. The Minister for Culture, Arts and Leisure - on the back of our work with residents around Girdwood and in the Lower Shankill approached us and asked us to advise them on how to best promote equality in their plans for their multi-million pound Stadia project - Ravenhill, Windsor and Casement Park stadium. It will need tested on the ground – specifically in relation to the disproportionate influence of the construction industry on government procurement practices – and the resistance of the Central Procurement Directorate - but it's looking like potential to be a good initiative providing concrete opportunities for those in most need in our society.

The second thing I wanted to say is that the people experiencing socio economic disadvantage aren't in the position to wait. They are demanding change on the basis of their rights and equality and the GFA created the tools to create shapes of governance to allow this change. Just not the political will to challenge institutional resistance to this change.

If you'll permit me I'd like to end with this. Back in 1986 when addressing an American audience in relation to the MacBride principles, PPR Founder Inez McCormack said it much better than I can. She said: *"We can all deliver the rhetoric which offends nobody, but the dispossessed. For those who have can always argue that tomorrow is the right time for change. For the have-nots, today is not soon enough, and we can only hope for their generosity of spirit in forgetting their yesterdays."*

# Mapping the rollback of children's rights

**Paddy Kelly, Children's Law Centre**

Between 1969 and 2003 as a result of the conflict:

- 274 children aged 17 and under died.
- 36% of all those killed were children and young people.
- 629 young people aged 18 to 21 lost their lives.
- The 18 to 23 age group suffered the highest number of deaths.
- Almost three quarters of children under the age of 18 killed in the Troubles were Catholic, a fifth were Protestant and the remaining 6% were from outside Northern Ireland.[9]

There are no complete figures for children injured as a result of the political conflict. The Northern Ireland Office does however provide a breakdown for some of those shot or beaten by non-state forces in 'punishment attacks.' Between 1991 and 1997, 120 young people were shot (usually in the kneecaps) and 234 assaulted by non-state forces. The psychological and the trans-generational impact of our conflict on children is incalculable.

Despite these figures there was no focus in our peace process on the impact of conflict on our children. They were mentioned sometimes as victims e.g. the disproportionate number of children killed by plastic and rubber bullets, but even then not in a critical way. For example in reporting Bloody Sunday at the time how many people commented on the fact that 6 of the 14 fatalities were children and importantly asked why they were differentially over represented among those who had been killed?

Children were rarely if ever centre stage when discussing the causes of our conflict, breaches of human rights or in the intense discussions leading up to the Good Friday Agreement (GFA). In that context it is hardly surprising that the GFA was silent on children and that what has followed has done little to deliver the human rights and economic benefits of the peace for children**.**

The state of children's rights across civil, political, social and economic rights, in this jurisdiction 15 years after the GFA makes for very uncomfortable reading. A short paper does not permit a comprehensive audit of post 1998, or even ongoing breaches, of children's rights rather it seeks to highlight a few cameos which reflect the rights deficit for children and expose the failure of the peace process to deliver for them.

Children are not mentioned in the GFA. Young people are mentioned only once in the agreement under reconciliation and victims of violence i.e. not as rights holders: *"The participants particularly recognise that young people from areas affected by the troubles face particular difficulties and will support the development of special community-based initiatives based on international best practice".*[10]

The GFA then goes on to talk about the need for the allocation of sufficient resources.

[9] The Impact of Political Conflict on Children in Northern Ireland' Smyth et al 2004.

[10] The Agreement: Agreement reached in multi-party negotiations, April 1998.

How this one commitment in the GFA which specifically mentions young people has not been delivered is in itself insightful.

Ten years after the GFA, the UN Committee on the Rights of the Child in its Concluding Observations in October 2008 stated in relation to children's mental health that it is *"… also concerned that in Northern Ireland - due to the legacy of the conflict - the situation of children in this respect is particularly delicate."*[11] The Committee on the Rights of the Child in 2008 also expressed its concern about the continued treatment of children in adult psychiatric wards and the small number of children with mental health problems who have access to the required treatment and care. The Committee recommended that additional resources and improved capacities be employed to meet the needs of children with mental health problems throughout the country, with particular attention to those at greater risk, including and echoing the GFA, children affected by conflict.[12]

In Northern Ireland over 20% of children under 18 years of age suffer significant mental health problems and this comprises the commonest form of severe disability in childhood.[13] Children living in areas most impacted upon by the conflict are more likely to have mental health needs. In Northern Ireland in 2012/13, only £19m has been allocated to Child and Adolescent Mental Health Services, which equates to 7.9% of the total planned mental health expenditure for that period,[14] despite the fact that children and young people under 18 represent nearly a quarter of Northern Ireland's population.

Despite the Committee's recommendations there is currently no forensic in-patient paediatric psychiatric provision in Northern Ireland and only limited in-patient adolescent facilities.[15] Almost 200 children in Northern Ireland were detained on adult psychiatric wards between 2007 and 2009.[16] From January 2012 until December 2012 85 children were admitted to adult psychiatric wards for either the assessment or treatment of a mental health condition.[17]

Children and young people with anorexia and complex mental health needs often have to be moved out of Northern Ireland to access specialist mental health services which do not exist in this jurisdiction, a clear breach of their Article 8 Right to Family Life rights under the ECHR. Between 2006 and 2007 there were 18 children sent for treatment for

[11] United Nations Committee on the Rights of the Child, Concluding Observations United Kingdom, CRC/C/GBR/CO/4, 20th October 2008, para. 56.
[12] *Ibid*, para. 57.
[13] Chief Medical Officer (1999), Health of the public in NI: report of the Chief Medical Officer 1999: Taking care of the next generation. Belfast: DHSSPS.xt generation.
[14] Freedom of Information Request from the Health and Social Care Board, dated 8th April 2013.
[15] The Belfast Health Trust provides a regional in-patient service which has 15 beds for children aged under 14 and a regional adolescent in-patient service of 12 beds for young people over 14 years of age. Agreement with adult mental health service providers in the Belfast Trust has allowed the creation of 4 "overflow" beds which are located within 2 adult wards (1 male and 1 female). However these "overflow" beds are not regional beds but are specifically for adolescents residing within two specific Health Trust areas of Belfast and the South Eastern area.
[16] 'Independent Review of Child and Adolescent Mental Health Services (CAMHS) in Northern Ireland' Regulation and Quality Improvement Authority, Updated 23rd February 2011. During a period of 30 months from April 2007-September 2009 a total of 197 young people were admitted onto an adult ward in Northern Ireland (p. 99).
[17] Series of Freedom of Information Requests responded to by the 5 Health and Social Care Trusts in July 2012.

mental health conditions outside of Northern Ireland at a cost of over £1.8 million.[18] In the financial year 2012/2013 9 children were the subject of an extra contractual referral (outside of Northern Ireland) for specialist treatment of a mental health condition at a cost of £2,241,424.[19] Such is the progress we have made in realising the rights of young people in respect of a key aspect of their only mention in the GFA.

**GFA - Human Rights Structures and Processes**

Linked to the issue of Child and Adolescent Mental Health Services (CAMHS) I would like to give you an example of how the Agreement human rights structures and process have failed children. Current government proposals for new mental health legislation in this jurisdiction demonstrates for CLC the failure of duty bearers and Independent Human Rights Institutions (IHRIs) to either understand or accept the fundamental concept of children's rights, both in respect of the substantive issue but also in respect of some of the human rights and equality process and structures agreed in 1998.

Briefly under the proposed Mental Capacity (Health, Welfare and Finance) Bill, which will be the biggest single piece of legislation that the Assembly will have looked at, the Department of Health, Social Services and Public Safety (DHSSPS) and the Department of Justice (DoJ) are proposing that the capacity section of the Bill, which is a gateway to significant services and protections, will only apply to those persons aged 16 and over. One of the effects of the exclusion of under-16s from the capacity section of the proposed legislation will be that in practice it will be easier to detain children in mental health institutions.

The Government has stated as its reasons for excluding children under 16 are that the test of capacity cannot be applied to children in the same way as adults because of their developmental stage i.e. they are intending to legislate for the presumption that all under16s lack capacity. This proposal clearly breaches Articles 3, 4, 6 12, 23 and 24 of the United Nations Convention on the Rights of the Child (UNCRC) and being in breach of the United Nations Convention on the Rights of People with Disability (UNCRPD) and is blatant discrimination on the grounds of age.

By moving forward with these proposals 22 years after the UK government ratified the Convention and 15 years after the GFA, two of the Departments in this jurisdiction with lead responsibility for children are effectively rejecting the fundamental concept of children's rights i.e. children as rights holders. In this instance CLC sought to utilise the human rights and equality protections and IHRIs provided within the GFA and which were designed to ensure that our post conflict society protects the rights of all, especially the most vulnerable, which includes children with mental health needs potentially at risk of taking their own lives.

In taking forward their policy proposals in respect of the Mental Capacity (Health, Welfare and Finance) Bill both the DHSSPS and the DoJ engaged in serious breaches of their section 75 equality duty. The Equality Commission for Northern Ireland (ECNI), who

[18] Response to Freedom of Information request.

[19] Response to Freedom of Information Request from the Health and Social Care Board dated the 29th May 2013.

is not only the guardian of the equality duty but also along with the Human Rights Commission constitutes the Independent Monitoring Mechanism for the UNCRPD, were in their own responses to these proposals deafening in their silence *vis a vis* the Department's section75 breaches. CLC have engaged and continue to engage extensively with the ECNI requesting they discharge their statutory duty to hold both Departments to account for their fundamental and serious breaches of their equality schemes with the consequential differential adverse impact their proposal would have on children with disabilities. Despite the significant investment of time, energy and intellect of a small non-governmental organisation (NGO) like CLC, the ECNI rejected our complaint about the DHSSPS's breach of its equality scheme and refused to investigate at their own instigation. So in relation to the one area in which young people were mentioned in the GFA i.e. as victims of the conflict, there is age discriminatory investment, little real protection under the equality and human rights protections provided for in the GFA and the IHRIs who should be championing this particularly vulnerable group of citizens are in CLC's experience failing to discharge their duties.

**Plastic Bullets**

The GFA provided for the establishment of an independent Commission to "make recommendations for future policing arrangements in Northern Ireland..." The Patten Commission's report, as it has become known, "A New Beginning: Policing in Northern Ireland" was published in September 1999. Paragraphs 69 and 70 of the Patten Commission Report recommended:

> *''69. An immediate and substantial investment should be made in a research programme to find an acceptable, effective and less potentially lethal alternative to the Plastic Baton Round (PBR).''*
>
> *''70. The police should be equipped with a broader range of public order equipment than the RUC currently possess, so that a commander has a number of options at his/her disposal which might reduce reliance on, or defer resort to, the PBR.''*[20]

In Northern Ireland nine children were killed by plastic and rubber bullets during the conflict. It is impossible to accurately report the number of children who were injured. A number of clear recommendations have been made by both the UN Committee on the Rights of the Child and the UN Committee against Torture in relation to the use of plastic bullets in Northern Ireland. In 2002 the Committee on the Rights of the Child expressed concern at the continued use of plastic bullets (baton rounds) as a means of riot control in Northern Ireland, on the basis that they cause injuries to children and may jeopardise their lives. The UNCRC Committee, following the recommendation of the Committee against Torture in 1999[21] urged that the use of plastic baton rounds as a means of riot

[20] *"A New Beginning: Policing in Northern Ireland"* The Report of the Independent Commission on Policing for Northern Ireland September 1999.

[21] United Nations Committee against Torture, Report of the Committee against Torture, A/54/44, 26th June 1999, para. 77(d).

control be abolished.[22] In 2008 the Committee on the Rights of the Child recommended that plastic bullets (Attenuating Energy Projectiles/AEPs) never be used against children.[23] Despite these clear recommendations the PSNI continue to use plastic bullets, including in public order situations when children and young people are present and have done so as recently as February and July 2013.

- On 13th July 2009 the PSNI fired 17 plastic bullets in the Ardoyne area of North Belfast during rioting, whilst children were present.[24] A number of injuries were incurred by young people as a result of being hit by AEPs, including the wounding of a 13 year old child from Ardoyne.[25]

- In July 2010 a 16 year old boy was hospitalised after sustaining severe liver damage as a result of being struck with plastic bullets fired by the PSNI during rioting at the Broadway interface in West Belfast.[26]

- On 29th January 2011 police fired one baton round during a riot in Lurgan, Co.Armagh.[27] It was reported that the PSNI believed that a rioter was struck in the leg. CLC were unable to get confirmation of the age of the person who was struck but news reports described them as a teenager.[28]

- From April 2008 until September 2012, AEPs have been used on a total of 168 occasions. A total of 579 AEPs were fired on these occasions.[29]

Both the UK's Association of Chief Police Officers (ACPO) guidance and the PSNI's own guidance makes clear that AEPs are not suitable for crowd control. The PSNI guidance states that the AEP is a less lethal option in situations where officers are faced with individual aggressors.[30] It goes on to acknowledge however that AEPs may in practice be used in crowd control situations.[31]

In addition the PSNI guidelines make clear that children should not be placed at risk by the firing of AEPs, particularly in public order scenarios where they may be amongst a

[22] United Nations Committee on the Rights of the Child, Concluding Observations United Kingdom, CRC/C/15/Add.188, 9th October 2002, paras. 27 – 28.
[23] *Op Cit* 3, para. 31.
[24] http://www.belfasttelegraph.co.uk/news/local-national/orde-other-forces-would-have-used-live-rounds-in-ardoyne-28487570.html. The PSNI also fired a number of plastic bullets on 31st August 2009 as a method of crowd control during disturbances in East Belfast where children were also present.ere children were also present.
[25] The Irish News, 17th August 2009, 'International rights adviser to examine riot baton round use' by Allison Morris.
[26] http://www.u.tv/News/Teen-stable-after-west-Belfast-riots/69baf1c3-6924-4001-b7bd-c06a9e82b292
[27] http://www.u.tv/news/Lurgan-riot-orchestrated-against-police/e0fa8e15-2011-4ae0-b14b-493d7d01a0a6
[28] http://www.newsletter.co.uk/news/PSNI-under-attack-in-39orchestrated.6706869.jp
[29] Calculated using 'Use of Force Statistics: 1st April 2012 to 30th September 2012' 14th December 2012, Police Service of Northern Ireland, p. 4.
[30] Service Guidance in Relation to the Issue, Deployment and Use of Attentuating Energy Projectiles (Impact Rounds) in Situations of Serious Public Disorder' Police Service of Northern Ireland, June 2005 (amended and re-issued December 2006), para. 2(4) (a).
[31] *Ibid*, para. 2(4) (b).

crowd and could be placed in danger should the AEP miss its intended target.[32] This clearly indicates that children themselves should not be the intended target of the firing of an AEP.

Plastic bullets have not been used as a means of crowd control in any of the other jurisdictions within the UK. They were not used during the 2011 riots in England. Following these riots, the Home Affairs Committee of the House of Commons in the UK Parliament initiated an inquiry and stated in relation to the idea that plastic bullets could have been used during this disorder that it would have been inappropriate and dangerous to do so. They referred to the lessons learned in the past in Northern Ireland over the use of such equipment.[33] This has lead to the reasonable question as to why it is continued to be viewed as acceptable to deploy plastic bullets in Northern Ireland, when it is not viewed as being acceptable to do so in England.

It is the opinion of the CLC that plastic bullets should never be used against children or in public order situations when it is known children are present; that such use is a breach of children's rights under the UNCRC and is potentially a breach of Article 2 of the ECHR. It is also CLC's view that the PSNI have, 14 years after it was published, totally failed to give effect to Recommendations 69 and 70 of the Patten Report. Further CLC would contend that in failing to hold the PSNI to account for their non-implementation of Recommendation 69 and 70, the Northern Ireland Policing Board has failed to hold the PSNI and the Chief Constable to account.

**Stop and Search**

Given the disputed role of policing during the conflict and noting the fact that the PSNI has informed CLC that 70% of its core business is with children and young people, one would have thought that policing relating to children and young people should have been a priority focus in transition.

Recent research[34] shows that large numbers of young people hold very negative perceptions of the PSNI. Young people maintain that they are frequently targeted by the police and are too readily labelled as criminals. Many young men referred to being stopped and asked details of their name and address for no apparent reason and contend that the police used these powers against them but not against adult members of their wider community. In addition, the research found negative perceptions of some young people by the police and found that the police sometimes target particular categories of young people by making assumptions about their types of behaviour based on their appearance and social background. In a survey of young people's contact with the PSNI conducted in 2009, the second most common form of contact young respondents had with the PSNI was that of being stopped and searched (29%).[35]

[32] *Ibid*, para 3.7.

[33] 'Policing Large Scale Disorder: Lessons from the Disturbances of August 2011', House of Commons Home Affairs Committee, Sixteenth Report of Session 2010 – 12, para. 32.

[34] 'Ten Years after Patten: Young People and Policing in Northern Ireland', Byrne J. and Jarman N., October 2010.

[35] 'Beyond the Margins. Building Trust in Policing with Young People, Achieve Enterprises and Public Achievement.' March 2010, p.18.

On 1st October 2009 it was reported in "*The Belfast Telegraph"* that almost 2,300 under 16's were stopped by the PSNI in the previous 12 months and that 27 of the young people who were stopped by the PSNI were aged just 9 and under, below the minimum age of criminal responsibility, the youngest being only 3 years old.

The CLC has received more up to date statistics from the PSNI on the use of its stop and search powers against children and young people. From 1st October 2011 until 31st March 2012, 2,817 under 18's were stopped, searched or questioned, representing 15.58% of the number of persons stopped, searched or questioned overall. 21 of these children were under 12.[36] Between 1st October 2011 and 30th September 2012, 5174 under 18s were stopped and searched. The CLC has obvious concerns about the PSNI's use of its power to 'stop and search' children who are below the age at which they may be legally culpable of any criminal activity. In addition, we have serious concerns about what we view as the disproportionate use of the PSNI's power to 'stop and search' in relation to children and young people under the age of 18.

It is also exceedingly worrying that the current numbers of children being stopped and searched appear to have increased significantly on the figures reported in the Belfast Telegraph for 2008 – 2009.

**Bill of Rights**

The proposed Bill of Rights provided for in the GFA presented for children's rights activists a potential framework to better protect children's rights in this jurisdiction. The Bill of Rights for Northern Ireland formed a key component of the human rights protections provided for in the GFA.[37] The Northern Ireland Human Rights Commission (NIHRC), under the terms of the GFA and in accordance with the Northern Ireland Act 1998[38] was mandated to provide advice to government on the Bill of Rights for Northern Ireland.[39]

The NIHRC delivered its statutory advice to government on 10th December 2008. As a result of strong lobbying from CLC and others it proposed both a separate children's rights section as well as mainstreamed provisions throughout the document. The NIHRC's proposals on the Bill of Rights, whilst containing some weaknesses from a children's rights perspective, most notably in respect of the minimum age of criminal responsibility (MACR) and the issue of the use of physical punishment in the home, nonetheless constitute a strong basis from which to develop protection for children and young people's rights in the Bill of Rights.

[36] Statistics received from Statistics Branch, Police Service of Northern Ireland.

[37] *Op Cit* 2, pp16-17.

[38] Northern Ireland Act 1998, section 69(7).

[39] "*..to consult and to advise on the scope for defining,* ***in Westminster legislation,*** *rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and –taken together with the ECHR [European Convention on Human Rights] - to constitute a Bill of Rights for Northern Ireland*." Northern Ireland Act 1998 section 69(7).

The power to legislate for a Bill of Rights for Northern Ireland rests with the UK government in Westminster.[40] Following the NIHRC's advices, the Northern Ireland Office (NIO) issued a consultation document on 30th November 2009. The UK Conservative Party do not support a separate Bill of Rights for Northern Ireland and the then Secretary of State for Northern Ireland has stated that he considers the need for a Bill of Rights for Northern Ireland to best be realised as a sub-section to a UK wide Bill of Rights and Responsibilities.[41]

It is CLC's view that in addition to being in breach of the GFA, such an approach to the Bill of Rights for Northern Ireland would clearly not ensure the best protection of children's rights. This approach is even more alarming in the context of media reports which suggest that senior Conservative Party ministers will seek to propose the repeal the Human Rights Act 1998.[42]

The proposals contained in the NIO's document would provide no legal protection whatsoever for children and young people's rights and are completely at odds with recommendations of leading international human rights institutions and experts.[43] They also run counter to the proposals on the protection of children's rights contained in the NIHRC's statutory advice to government, dismissing as they do all of the child specific provisions recommended by the NIHRC.

The main rationale given by the NIO is that those child specific provisions proposed don't meet 'the particular circumstances' criterion contained in the Good Friday document.[44] As the NIO does not set out anywhere in the consultation document an unambiguous understanding of the 'particular circumstances' criterion it is difficult to engage with this rationale; however a very considerable body of evidence exists which demonstrates how, as both a direct and indirect result of the conflict, children's lives in Northern Ireland are markedly different to those of their peers in the other two jurisdictions of the UK. For example, recent Save the Children research has revealed that rates of severe child poverty in NI have returned to above the 2004-2005 level of 10% (43,000 children).[45] Save the Children found that in 2010/2011 12% of children or approximately 50,000 children in Northern Ireland were living in severe poverty. They also found that for the same period 21% of children were living in persistent child poverty,[46] which is more than double the GB rate and is due largely to the legacy of the conflict.[47] In addition, a recent report from the Institute of Fiscal Studies warns that relative child poverty will increase by 8.3 percentage points to 29.7% and absolute child poverty to 32.9% in Northern Ireland by 2020 due to

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[40] Ibid '***in Westminster legislation'.***

[41] Letter from Owen Patterson MP, Secretary of State for Northern Ireland to Peter Robinson MLA First Minister, NI Assembly 5th September 2011

[42] http://www.theguardian.com/politics/2013/mar/03/tory-ministers-human-rights-act

[43] United Nations General Assembly Fifty-fifth session: Agenda item 110: Promotion and Protection of Children's Rights. 3 October 2000: pp9-10 and United Nations Committee on the Rights of the Child, Concluding Observations United Kingdom, CRC/C/GBR/CO/4, 20th October 2008, paras. 10 and 11.

[44] See note 14 "*...to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights,* ***to reflect the particular circumstances of Northern Ireland****,....".*

[45] *Severe Child Poverty in Northern Ireland"* Save the Children February 2011Save the Children February 2011

[46] Households below average income (HBAI) 2010-11 http://www.dsdni.gov.uk/index/stats_and_research/stats-publications/stats-family-resource/households/hbai-2010-11.htm.

[47] Monteith, M., Lloyd, K., McKee, P. (2008) 'Persistent Child Poverty in Northern Ireland', Save the Children, ARK and ESCR

the impact of welfare reforms, other austerity measures, job losses and budget cuts.[48] The British Coalition government are very reluctant to engage in respect of the Bill of Rights for Northern Ireland and cited the work in respect of the UK wide Bill of Rights and Responsibilities alongside the opposition of some of the Northern Ireland political parties to a Bill of Rights for Northern Ireland as an excuse for inaction. Their argument is however flawed given responsibility for taking forward a Bill of Rights for Northern Ireland lies with the UK (Westminster) Government and not with local parties. Further the UK Commission which was considering a UK Bill of Rights published their advice in December 2012 with no consensus on a UK Bill of Rights, but full consensus that:

> In particular we recognise the distinctive Northern Ireland Bill of Rights process and its importance to the peace process in Northern Ireland. We do not wish to interfere in that process in any way nor for any of the conclusions that we reach to be interpreted or used in such a way as to interfere in, or delay, the Northern Ireland Bill of Rights process.[49]

In the absence of a strong legislative framework in this jurisdiction for the protection of children's rights and noting the potential the Bill of Rights presents for this protection, it is imperative that the integrity of the GFA is defended in this respect.
The list of failures of the State to implement the UNCRC and all the concluding observations since 1995 is a very long one. The State's failure to give full effect to the provisions of the GFA, St Andrews Agreement and Hillsborough to promote and protect the rights of its most vulnerable citizens, children, including in respect of TASERS, Anti-Social Behaviour Orders (ASBOs), Mosquito devices, the legalising of the assault of children, the MACR, age discrimination, academic selection, the non-compliance of the youth justice system with human rights standards, failure to deliver on the Hillsborough Agreement *vis a vis* a review of Youth Justice and lack of funding for special educational needs, makes for concerning reading.

As we face into the next periodic report of the UK government to the UN Committee on the Rights of the Child, the CLC will again not be seen to be wanting in highlighting the breaches of children's rights in this jurisdiction. On a day to day basis CLC will continue to champion children's rights and advocate for the vindication of children's rights.
With the reality, 15 years on from the signing of the GFA, of a regression in the vindication of children's rights CLC calls on the State to give effect to its obligations under the GFA, St Andrews Agreement and Hillsborough, the UNCRC and other international human rights instruments they have signed. CLC also challenges the IHRIs to discharge fully their statutory duty to vindicate the rights of children. CLC would also call on colleagues in the human rights community and human rights advocates in their engagements on the delivery of the Agreement, when advocating for human rights to raise children's rights.

It would also be great if the human rights community could be seen to advocate as one and with a strong voice for the inclusion of children in the proposed new age discrimination legislation. Incredibly their inclusion is not a given.

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[48] Institute for Fiscal Studies, Child and Working-Age Poverty in Northern Ireland from 2010-2020 http://www.ofmdfmni.gov.uk/child-working-age-poverty-ni-2010-2020.pdf

[49] 'A UK Bill of Rights? The Choice Before Us – Volume 1', December 2012, para. 75.

## The right to women's full and equal political participation

**Emma Patterson, Equality Coalition Coordinator, CAJ**

15 years ago in the Good Friday/ Belfast agreement the parties affirmed their commitment to the mutual respect, civil rights and religious liberties of everyone in the community. They set out eight **'**key areas' under 'rights, safeguards and equality of opportunity.'

Out of these eight some have been delivered and some have not. An undelivered commitment is the 'right to women's full and equal political participation'. If the freedom from sectarian harassment or freedom of political thought was still undelivered to this day Northern Ireland would be a different place. Instead reneging on the commitment to women has become common place as it is yet to be meaningfully addressed by either party.

Women in Northern Ireland are still struggling to have their voices heard at a political level. We have 21/108 female MLAs a mere 19%. The facts speak for themselves, we are lacking behind countries such as Rwanda. Rwanda's parliamentary election saw women win 45 of the 80 seats. Nearly half were elected in women-only seats, with the rest triumphing in open ballots. Every political party ignores the legislation that would permit all-women candidate shortlists. Bronagh Hinds (DemocraShe) has done the sums and at the current rate of progress it would take 16 election cycles – 65 years – for women to become 50% of MLAs. In world ranking terms, Wales and Scotland are 8th and 17th and Northern Ireland is 62nd.

But what effect is this actually having on the women of Northern Ireland, if any? Gender neutral policies are being developed frequently, such as the new shared future document Cohesion, Sharing and Integration (CSI) and the Victims Strategy both of which had no mention of women in them. Were women not part of the past conflict and not needed for the future of peace? Margaret Ward Director of WRDA believes: "*this gender neutral approach fails to acknowledge the factors that prevent women from being able to compete on equal terms with men and fails to consider the use of positive action measures to redress inequalities."*

The report of the Consultative Group on the Past failed to acknowledge women by having a gender neutral approach, yet women's role within conflict and then in peace building and conflict resolution is very different to that of men. The women of Northern Ireland feel they have no voice and are invisible. Etain O'Kane in response to the dealing with the past in Northern Ireland wrote; *'Women were not recognised for their roles and experiences throughout the conflict and therefore their invisibility cannot be mirrored in the post conflict structures. We expect the structures proposed to deal with the legacy of the past take this as their starting point and seek to address this gross inequality.'*

At a recent seminar Avila Kilmurray, Director of the Community Foundation for Northern Ireland, put it precisely that, "*decision making needs stripped back and opened up.''* If we did have more women in political life there would be more gender perspectives and input into policies with less ignorance as to the role women play in their communities, families and in public life.

Women are also mentioned under 'economic cultural and social rights' within the Agreement. There was a commitment that there would be policies promoting social inclusion, in particular community development and the advancement of women in public life. Again this promise has not been kept instead the old community jobs that the women did for free now with peace money from Europe have a wage attached to them and men have moved in to do the community work previously done by women.

Another example of the role women should be having in the community is in allocating the Social Investment Fund, a fund for supporting communities in increasing employment, tackling mental health, increasing services and facilities and addressing problem areas. In North Belfast the steering group has got eight men and no women deciding on the funding for that community even though women did apply.

The Bill of Rights and the Single Equality Bill were to be implemented in Northern Ireland to further protect these socio economic and cultural rights but these have never come to pass, with no clear political will for it to ever become a reality.

15 years on and women's socio economic rights are being chipped away even further with the current welfare reform bill. The proposal is that payment of child benefit will go straight to the head of the household in many cases, the man. A woman will have to prove her husband or partner is abusive before the payment will be split or moved, not an option for a lot of women in the cycle of abuse.

The recession has also put a halt to improvement in the gender balance of the workforce. The female employment rate in Great Britain registered a slight increase in 2011 0.4 percent; the trend in Northern Ireland was in the opposite direction, with a decrease of 0.5 per cent cited in the recent Community Relations Council Peace Monitoring Report.

But how can the government fulfil their commitments to women? There are many mechanisms that could be used to ensure women's inclusion; quotas, women only candidate lists, composition of women on boards and committees such as the forthcoming review of public administration in local councils.

There are also international mechanisms that can be used such as the United Nations Security Council Resolution 1325 Women, Peace and security. UNSCR 1325 was adopted in 2000 and is an important watershed marking the unique and disproportionate impact of conflict on women. It highlights the critical role of women in conflict prevention, peace negotiations, peace building and post conflict reconstruction and governance.

UNSCR 1325 makes use of the four P's; Participation, Prevention, Perspectives and Promotion. Although it was adopted two years after the 1998 peace agreement in Northern Ireland there are instruments that could be implemented regardless and there have been further peace talks where UNSCR 1325 could have been adopted since such as the subsequent St Andrews and Hillsborough agreements.

UNSCR 1325 does not apply to Northern Ireland at the present time due to a disagreement over the definition of 'conflict', regardless of this opinion there is still safeguards within UNSCR 1325 that would benefit the women of Northern Ireland. Government would have to take into account the perspectives of women and promote

them in public life and help prevent women being used and forgotten in a conflict situation by having them fully participate in the countries future.

Mary Robinson former President of Ireland, UN High Commissioner for Human Rights and current Special Envoy for the Great Lakes region of Africa (a job never held by a woman before) declares, "*We have seen first- hand in countries from every region the critical role women play as peace builders, as community organisers, as voices for those who are marginalised. We are convinced that strengthening women's leadership at every level is key to advancing peace, sustainable development and human rights in the 21st Century*."

In conclusion, Northern Ireland after the Good Friday/ Belfast Agreement had a political will to change to include those from the Catholic community and make sure there was a political and religious balance going forward. It would no longer, 15 years on, be acceptable for there to be any majority Catholic or majority Protestant place of work or organisation but this is not the case for women it seems still acceptable to have more men than women on a committee, in the judiciary or in political life.

Women are crucial contributors to their societies. They are the ones who cross ethnic and religious borders; they are the ones who advocate for education, employment and new opportunities. Peace can only last when women are involved. You would think it speaks for itself. Women's inclusion was at the heart of the Good Friday/Belfast Agreement and we need to make sure that that inclusion becomes a reality before another 15 years goes by and another generation of women and girls are left invisible.

## Specialist Session 3:

## Policing, Security and Justice Reform 15 years on

This session, chaired by former CAJ Chair Mary O'Rawe, takes stock of the status of commitments to policing and justice reform, including reflecting on the Patten Commission reforms and policing accountability along with commitments in the agreements to end emergency legislation.

**Speakers:** Niall Murphy, Solicitor KRW Law and Mick Beyers, former CAJ policing programme officer.

**Dr. Mick Beyers**

**Niall Murphy**

# Emergency Law and Reform

**Niall Murphy, KRW Law LLP**

The introduction of emergency reactive legislation, is not a modern phenomenon. Whereas the Prevention of Terrorism (Temporary Provisions) Act 1974 was a reaction to the outcry surrounding the Birmingham pub bombings, and some might say the 90 day debate on pre trial detention which manifested itself in the Terrorism Act 2006, was a legislative reaction to the 7/7 bombings of 2005, it is a little known fact that the 1883 Explosive Substances Act had all three parliamentary readings in one night in anticipation of a Fenian Bomb plot,[50] which led to the life imprisonment of Thomas Clarke. The Good Friday Agreement of 1998 however sought to bring an end to such emergency legislation with an aspiration towards a more normalised society.

With some caveats, the 1998 and subsequent Agreements foresaw demilitarisation and an end to emergency legislation. The Good Friday Agreement in 1998 asserted that *"the British Government will make progress towards the* objective *of as early a return as possible to normal security arrangements in Northern Ireland, consistent with the level of threat and with a published overall strategy"* and that this would specifically deal with *"the removal of emergency powers in Northern Ireland."* More latterly the 2003 Joint Declaration envisaged the *"repeal of counter terrorism legislation particular to Northern Ireland"* by April 2005.

## 1. Trial by Jury – "The Lamp That Shows That Freedom Lives"[51]

The most obvious and most complained of the special measures was the deprivation of the right to a trial by a jury of ones peers for those charged with serious offences. Recognition of the fundamental right to trial by a jury is long established,[52] and was recently described by Lord Steyn as *'an integral and indispensable part of the criminal justice system'*.[53]

The use of Diplock courts here has been a source of controversy for nearly 40 years. The system was first introduced in 1973 following a review by Law Lord Kenneth Diplock into how the local justice system should deal with paramilitary offences – other than by the use of internment. He recommended the right to trial by jury should be "suspended" and replaced with a single judge.

However, even the way Lord Diplock came to make his decision caused controversy, by virtue of the fact the majority of the evidence given to the inquiry had been heard in London, with the Law Lord only visiting the north on two occasions, both times to speak to members of the security forces. Despite the suggestion the removal of the right to a jury trial would be temporary, and notwithstanding the undertaking made in the Good Friday and subsequent agreements, the system remains in place nearly 40 years later. Far

[50] The Terrorism Acts in 2011 – Independent Reviewers Report, David Anderson QC June 2012, p133
[51] Lord Devlin Hamlyn Lecture 1956
[52] For example see R v Islington North Juvenile Court ex parte Daley [1983] AC 347 and R v Hayden [1975] 1 WLR 852
[53] R v Mizra [2004] 1 AC 1118

from removing the emergency provision as agreed, the British Government merely legislated for them on a permanent basis via sections 1 to 9 of the Justice and Security (Northern Ireland) Act 2007.

Trial by jury is a "symbol of normality" which generates public confidence in the criminal justice system because of its participatory nature. Indeed it has been argued that the government's consideration of this jurisdiction as a continuing emergency situation[54] 'perpetuates a lack of confidence in the Rule of Law'.[55] Indeed Rights Watch UK[56] have observed that 'the current system has the potential to hinder progress towards peace because Northern Ireland is perceived as being in a state of exception', and that non jury trials only serve to emphasise regression from the peace process and an obstacle to delivering normalisation.

The system here differs wholly in its application to the criminal justice system in England and Wales thereby creating a dual standard. Section 44 of the Criminal Justice Act 2003 permits the Crown Prosecution Service (CPS) to apply for trial without jury through judicial order from the Crown Court. The judge must be satisfied that there is *evidence* of a real and present danger that jury tampering will occur and that, despite precautionary steps such as police protection, there remains a substantial likelihood of jury tampering making it necessary in the interests of justice for the trial to be conducted without a jury. This provision has the safeguards of judicial oversight, high objective thresholds and consideration of alternative precautionary steps. It is noteworthy that none of these safeguards are present in the regime under the Justice and Security 2007 Act here.

The Director of Public Prosecutions (DPP) here may certify a case for non- jury trial if he '*suspects'* that any of the stated conditions are met and is '*satisfied'* that in view of this there is a '*risk'* that the administration of justice '*might'* be impaired if the trial were to be conducted with a jury' (emphasis added). This subjectivity is especially problematic given the fact that the DPP (NI) is not required to give any reasons for such decisions.

The significant public and constitutional importance of the removal of the right to jury trial in the present legislative context was recently considered in the case of Brian Arthurs,[57] who had been charged in May 2007 with fraudulently representing his income in a mortgage application for a house that he was building for himself to live in. It was never suggested during three days of police questioning at Antrim Serious Crime Suite that the offence was connected to paramilitary activity or to the activities of a paramilitary organisation. Notwithstanding this, on 16th March 2009, the DPP served a certificate pursuant to s1 of the JSA 2007, removing Mr Arthurs (and his wifes) right to a jury trial. No reasons were given for the decision. The case highlighted the anomaly with the law in England and Wales, the arbitrary application of the system by the

[54] Criminal Justice Review Group, Review of the Criminal Justice System in Northern Ireland, (3 March 2000) at page 149, paragraph 7.3.
[55] See Rosemary Craig, "Non-jury courts in Northern Ireland" 173 (23) Criminal Law and Justice Weekly 2009, 363.
[56] Rights Watch UK – Submission to Theresa Villiers MP re Non Jury Trial Arrangements for NI 14th March 2013.
[57] Arthurs' (Brian and Paula) Application [2010] NIQB 75

prosecution, and further the fact that the Appellants had no opportunity to make representations prior to the issuing of the certificate. Unfortunately our Divisional Court found, on a strict statutory interpretation point, that the only requirement was that the Director of Public Prosecutions act rationally and consider relevant factors in making a personal judgement on whether he has the requisite suspicion to certify pursuant to the JSA 2007, and not that he act fairly. Leave to appeal this decision to the Supreme Court was refused and as such this is the current state of the law.

There is a consultation process ongoing, mindful of the expiry date of the current arrangements in July 2013, and unfortunately the consultation period was unduly brief, and has passed, so it may have been a case of blink and you have missed in terms of making submissions, but thankfully the CAJ have made a robust submission which can be accessed on the website.[58]

## 2. Reintroduction of Supergrass Trials under SOCPA 2005

Another spectre from the human rights vacuum which was the 1980's returned to haunt the criminal justice system recently, in the form of Supergrass Trials, or assisting offenders as they are now referred to. The use of the process began with the arrest of Christopher Black in 1981, who having secured assurances that he would have protection from prosecution, Black gave statements which led to 38 arrests. On 5 August 1983, 22 members of the Provisional IRA were sentenced to a total of more than 4,000 cumulative years in prison, based on Black's testimonies alone (eighteen of these convictions were overturned on appeal on 17 July 1986.) By the end of 1982, 25 more 'supergrasses' had surfaced contributing to the arrests of over six hundred people from paramilitary organizations, such as the Provisional IRA, the Irish National Liberation Army (INLA) and the Ulster Volunteer Force.

On 11 April 1983, members of the loyalist Ulster Volunteer Force were jailed on the evidence of supergrass Joseph Bennett. These convictions were all overturned on 24 December 1984. In October 1983, seven people were convicted on the evidence provided by supergrass Kevin McGrady although the trial judge Lord Chief Justice Robert Lowry had described McGrady's evidence as "bizarre, incredible and contradictory". The last supergrass trial finished on 18 December 1985, when 25 members of the INLA were jailed on the evidence of Harry Kirkpatrick. 24 of these convictions were later overturned on 23 December 1986.

Notwithstanding the 25 year hiatus and general acceptance that trials based solely on the evidence of a co-accused, who was benefitting from inducements was not a good idea, the 'supergrass' system was resurrected on a statutory basis under s71-75 of the Serious Organised Crime and Police Act 2005 (SOCPA). SOCPA provides a framework whereby an 'assisting offender' can be offered immunity from prosecution, a reduced sentence or undertakings that evidence won't be used in prosecutions. SOCPA 2005 itself vests the formal power to grant immunity, exclusion undertakings, or a reduced sentence in the prosecutor – normally the Public Prosecution Service (PPS). The written agreement with

[58] http://www.caj.org.uk/files/2013/03/13/S405_CAJs_Response_to_NIO_on_NonJury_Trial_Arrangements_in_Northern_Ireland,_March_2013.pdf

the assisting offender is also made with the prosecutor. In practice however there is a considerable role in 'debriefing' the assisting offender vested in the PSNI.

To date much of the human rights discourse on SOCPA/supergrass issues has focused essentially on the issues around a fair trial and due process. This is the obvious issue when considering the potential for unsound convictions of accused persons purely on the basis of uncorroborated 'supergrass' evidence, however there is a separate human rights angle on SOCPA namely the extent its processes are compatible with duties to independently investigate deaths in which the state and its agencies, including the police, may be implicated.

The first such trial deploying the evidence of a co-operating offender under SOCPA was that of Steven Brown[59](or Revels) who was convicted of the murders in Tandragee in February 2000 of Andrew Robb and David McIlwaine, principally on the evidence of Mark Burcombe who gave evidence that he had present at the murders committed by Brown. His father Paul, a dedicated victims campaigner, remarked outside court that he had *"a lot of issues around Burcombe, I understand fully his evidence was used and was compelling as to the actions of Revels and Dillon, but his own role in the murders is yet to be explored. I don't believe for one minute he told the complete truth."* [60]

Indeed the issue of the role of co-operating offenders and the probity of their evidence was well reported in the recent and failed trial in relation to the murder of Thomas English on Halloween night, 2000. The evidence of the Stewart Brothers to most observers was incredulous and implausible, yet somehow the public purse was exposed to a reported cost of a £23 million trial based on absolutely no forensic evidence, but merely the evidence of two brothers, one of whom by his own admission conceded; "*If someone had asked me what my name was I would not have been too sure"* and *"there were pixies running about the state I was in at the time"* [61]

More recently, and on the point of the incompatibility of the SOCPA system with the State's duty to investigate cases which may point to the involvement of its own agents is the recent troubling decision not to prosecute those persons previously charged with the murder of Sunday World journalist Martin O'Hagan. In this case, the PPS benefitted from forensic evidence, independent witness evidence, as well as the evidence of a co-operating offender Neil Hyde. Notwithstanding the fact that Hyde did not give evidence against his co-accused, he has benefitted from a 15 year reduction in sentence from 18 years to 3.[62] The time line[63] is disconcerting insomuch as it appears that the decision as to

[59] R v Brown [2011] NICA 11

[60] http://www.belfasttelegraph.co.uk/news/local-national/mums-weep-as-killer-of-andrew-robb-and-david-mcilwaine-yawns-in-court-28469166.html

[61] R v Haddock and others [2012] NICC5 at para 284

[62] R v Hyde [2013] NICA 8

[63]

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|---|---|
| 10/9/08 | Hyde arrested (following A's statement) |
| 16/9/08 | Hyde charged with murder, and was reported as being in protective custody, and shortly after that he had offered to give evidence. |
| September 2008 | 4 men charged with murder |
| 10/7/10 | Charges against the 4 charged men dropped |
| 28/10/11 | Charges of murder against Hyde dropped |
| 2/12/11 | Hyde pleads guilty to 48 other charges |
| January 2012 | Hyde sentenced by Judge Lynch to 18 years, reduced to 3 on application of SOCPA. |

whether or not Hyde was a reliable witness was not taken until such time as he had already benefitted from the massive reduction in sentence, for in effect, nothing. It is all the more concerning, when one considers the fact that Mr O'Hagan's family believe that those charged with the murders are approved security service agents.

The experience and outworking of the O'Hagan and English cases are such that the SOCPA process as it currently presents, are in my view, not fit for purpose.

## 3. s21 and s24 STOP AND SEARCH JUSTICE and SECURITY ACT 2007[64]

An issue which has raised the ire of many observers and citizens is the unusual constitutional position which pertains to the legal position with regards to police policy of stop and search, which effectively allows for a police officer to stop and search a suspect without reasonable suspicion here, whereas in England and Wales, a reasonable suspicion is required.

The historic genesis of the power is also rooted in the Emergency Temporary Provisions. Under section 16 of the Emergency Provisions Act 1973, a person could be arrested for failing to answer certain questions when stopped by a police officer or soldier. This provision was re-enacted several times and was ultimately re-enacted as section 89 of the Terrorism Act 2000.

Section 89 allowed a police officer or soldier to stop a person for so long as is necessary to question him to ascertain

> (a) his or her identity and movements,
> (b) what he [or she] knows about a recent explosion or another recent incident endangering life; [and]
> (c) what he [or she] knows about a person killed or injured in a recent explosion or incident.

This section ceased to have the force of law here on 31st July 2007 and was replaced on 1st August 2007 by (the similarly worded) section 21 of the Justice and Security (Northern Ireland) Act 2007.

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[64] Section 21 of the Justice and Security (Northern Ireland) Act 2007 provides:

> **21 Stop and question**
> (1) A member of Her Majesty's forces on duty or a constable may stop a person for so long as is necessary to question him to ascertain his identity and movements.
> (2) A member of Her Majesty's forces on duty may stop a person for so long as is necessary to question him to ascertain—
> (a) what he knows about a recent explosion or another recent incident endangering life;
> (b) what he knows about a person killed or injured in a recent explosion or incident.
> (3) A person commits an offence if he—
> (a) fails to stop when required to do so under this section,
> (b) refuses to answer a question addressed to him under this section, or
> (c) fails to answer to the best of his knowledge and ability a question addressed to him under this section.
> (4) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

The Terrorism Act 2000 contained a new power (section 43/44), allowing police officers *anywhere* in the UK to stop a person or vehicle and carry out a search "for articles of a kind which could be used in connection with terrorism." The Act explicitly stated that the power may be exercised "*whether or not the constable has grounds for suspecting* the presence of articles of that kind."[65]

In September 2003, Gillan and Quinton were stopped and searched under section 44 and sought declarations that the authorisations were unlawful. They failed through the Courts in the UK. The House of Lords recognized the significance of the police power but said that Parliament had done enough to make it a lawful and proportionate interference with people's rights to a private life, freedom of speech, and freedom of association by subjecting it to constraints. The European Court of Human Rights[66] disagreed and found a breach of Article 8.

> 85. In the Court's view, there is a clear risk of arbitrariness in the grant of such a broad discretion to the police officer. …..
> 87. In conclusion, the Court considers that the powers of authorisation and confirmation as well as those of stop and search under sections 44 and 45 of the 2000 Act are neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse. They are not, therefore, "in accordance with the law" and it follows that there has been a violation of Article 8 of the Convention."

As a result, the UK government abandoned the use of section 44 on 8th July 2010, which provided the only statutory basis in England and Wales for stop and search without individual reasonable suspicion. However, the PSNI retained the powers here under the JSA without any such requirement for reasonable suspicion.[67]

Although the JSA is novel to this jurisdiction, we should not be treated as a 'special case' - the terrorist threat is at as heightened a level ('severe') in Britain as it is here.

The lawfulness of this statutory provision was recently considered in July 2012 by our Divisional Court in a judicial review application by Marvin Canning,[68] who challenged section 21 and paragraph 4(1) of Schedule 3 of the Justice and Security (Northern Ireland) Act 2007 on six bases:

i. The ruling of the ECHR in Gillan and Quinton on section 44 of the Terrorism Act 2000 applies with equal force to section 21.
ii. Section 21 confers powers upon the PSNI which are *unnecessary and disproportionate*;

[65] However, the 2000 Act did require the use of the new power to be authorised in advance for a particular area by a senior police officer who "considers it expedient for the prevention of acts of terrorism." The authorisation had to be confirmed by the Secretary of State within forty-eight hours and could not last for longer than twenty-eight days.

[66] Gillan and Quinton v. THE UNITED KINGDOM (Application no. 4158/05) 12th January 2010 ECHR 4th Section.

[67] The Protection of Freedoms Act ("the 2012 Act") received Royal Assent on 1st May 2012. In short summary, the 2012 Act has withdrawn section 44 of the Terrorism Act 2000 and replaced it with section 47A of the Terrorist Act. This new section 47A is also accompanied by a revised Code of Practice which came into effect in July 2012. The section 47A power has not yet been used in Great Britain or Northern Ireland.

[68] In re Canning's Application [2012] NIQB 49

iii. Section 21 confers powers that are *excessively wide, unrestricted, with insufficient safeguards against abuse and which can be exercised arbitrarily'*
iv. The section 21 powers *have been used arbitrarily against the Applicant;*
v. Section 21 is *incompatible with Article 8*.
vi. Section 21 is *incompatible with Article 5.*

It was argued that just like with section 44, sections 21 and 24 require:

- no suspicion, reasonable or otherwise, before the power is exercised and
- there is no requirement of "necessity", so that there is no element of proportionality.
- The discretion is expressed in terms of an unfettered power.

Moreover, sections 21 and 24 lack even some of the 'safeguards' that were incorporated in section 44 but which were found to be inadequate.[69]

Nor are any limits imposed on the range and breadth of questions that can be asked (and must be answered) under section 21 in order to ascertain a person's identity and movements. Without entertaining any suspicion whatsoever about a person, a police officer is empowered to require that person to inform him where exactly he has been (throughout a period in the past which is not limited in the statute) and where he intends to go (throughout a period in the future which is not limited in the statute). For that reason, section 21 is potentially a more intrusive power than that provided in section 44, bearing in mind also that a failure to answer questions posed by a police officer under this section is a criminal offence.

CAJ have observed[70] that the PSNI use of the legislation has been strategic in its deployment in that police have at times used the powers on a policy basis for the purpose of 'disruption' of persons who they 'suspect' might be 'dissident republicans'. In 2009, the then Chief Constable Hugh Orde, at a public meeting of the Policing Board in Derry defended the 200% jump in the use of stop and search by saying, *"the policy aimed to disrupt dissident republican activity."*[71] In addition, the JSA Independent Reviewer noted the arguments of Senior PSNI officers that the powers have had a *"significant preventative and disruptive effect"*.[72] Nothwithstanding the Independent Reviewer's commendation that the powers have had a disruptive effect, one hopes that when the matter is investigated by the Police Ombudsman's office would not accept that as a valid reason for stopping someone and that whereas there could be a grey area involving whether the officer's suspicion is reasonable, unreasonable 'stops' and harassment of an individual, clearly, would not be acceptable, in my view.

[69] In particular, a stop and search under section 44 could only be conducted if an authorisation was in place for a specified area. Such an authorisation could only be given by a senior police officer and only where it was expedient in the prevention of acts of terrorism. No such restrictions apply to sections 21 and 24.
[70] 'Still part of life here ? - A report on the use and misuse of stop and search/question powers in Northern Ireland. ' Committee on the Administration of Justice, November 2012.
[71] 'Orde defends stop and search rise' BBC News Online 18 February 2009 (accessed October 2012, available at: http://news.bbc.co.uk/1/hi/northern_ireland/7898346.stm).
[72] 'Fourth Report of the Independent Reviewer of the Justice and Security Act' Robert Whalley CB, November 2011, paragraph 233.

The case was lost in first instance, although the Court did hold that the question power did engage article 8 of the ECHR, contrary to PSNI submissions that unlike its search counterpart it did not, and was argued before the Court of Appeal at the end of March, and judgement is reserved and keenly awaited.

## 4. 14 Day Detention without Charge

> *"Those who would give up Essential Liberty to purchase a little Temporary Safety deserve neither Liberty nor Safety". Benjamin Franklin*

When the police arrest a person in England and Wales in connection with an offence under the general criminal law, under the Police and Criminal Evidence Act 1984 they may detain him for questioning for up to 36 hours. At the end of this time the person must either be charged or taken before a magistrate, who may authorise further detention for additional periods, provided that the total does not exceed 96 hours.[73]

**Detention without Charge Under Anti-Terrorist Legislation** [74]

From their original enactment in 1974 onwards the Prevention of Terrorism (Temporary Provisions) Acts contained a provision permitting the detention by the police of a person arrested on suspicion of involvement in acts of terrorism for a period of up to 48 hours following his arrest by a police constable, and for a further period of up to five days if the Secretary of State approved such an extension. This power was available to police officers anywhere in the UK.

Section 11 of the Northern Ireland (Emergency Provisions) Act 1978 gave police constables here the power to detain people they suspected of being terrorists for up to 72 hours. Section 14 of the same Act gave British soldiers the power to detain suspects for up to four hours.

In the report of his Inquiry into Legislation against Terrorism, published in October 1996, Lord Lloyd of Berwick, who was envisaging a situation in which lasting peace had been established here, recommended that the police retain the power to detain terrorist suspects for a maximum of 48 hours following their arrest and that if a further period of detention was required in any case they should seek judicial authorisation to extend the period of detention for up to two days, making four days in all.[75] This would have brought the provisions governing detention without charge in terrorist cases into line with the equivalent provisions under the general criminal law.

However, far from the four day maximum detention for terrorism offences, envisioned of Lord Lloyd of Berwick being realised, the UK government introduced the Terrorism Act 2000, whose long form title is interesting to consider in that the express intention of

[73] Police and Criminal Evidence Act 1984, sections 41-44.
[74] Select Committee on Home Affairs Fourth Report, published 20th June 2006.
[75] Inquiry into Legislation against Terrorism, Cm 3420, October 1996, Vol. I, p.45

Parliament had this jurisdiction at its core contemplation: *"An Act to make provision about terrorism; and to make temporary provision for Northern Ireland about the prosecution and punishment of certain offences, the preservation of peace and the maintenance of order."*

The Terrorism 2000 Act was the UK's first permanent counter terrorism statute[76] and was the first of a number of general Terrorism Acts passed by the Parliament of the United Kingdom. It superseded and repealed the Prevention of Terrorism (Temporary Provisions) Act 1989 and the Northern Ireland (Emergency Provisions) Act 1996. Section 41 of the Act provided the police with the power to arrest and detain a person without charge for up to 48 hours if they were suspected of being a terrorist.[77] This period of detention could be extended to up to seven days if the police can persuade a judge that it is necessary for further questioning.[78]

This period was later extended to 14 days by the Criminal Justice Act 2003 and remarkably to 28 days by the Terrorism Act 2006.

Reflection of Hansard's debates make fascinating reading with regards to the true intention of Parliament when comparing the practical outworkings of the Statute in practice. The Blair Government was arguing for 90 days of detention without charge,[79] and the police also stressed the international nature of terrorist networks. The Select Committee concluded: [80]

> We consider that the nature of the terrorist threat <u>has</u> changed: while there is no sharp break in the continuum between Irish republican terrorism and terrorism today, there are a number of significant developments.
>
> - The first of these is that while Irish republican terrorism was brutal, and deliberately killed or injured large numbers of people, contemporary terrorism is distinguished by the centrality of the intention to cause mass casualties indiscriminately.
> - Secondly, suicide bombers are a new phenomenon in this country.
> - Thirdly, contemporary terrorism has an international basis which makes conspiracies more extensive and complex and increases the likelihood that recruitment to terrorism will continue to grow.
> - Fourthly, the nature of the current threat appears less amenable to negotiated political resolution.

[76] -The Terrorism Acts in 2011 – Independent Reviewers Report, David Anderson QC June 2012, p6
[77] Terrorism Act 2000, schedule 8, para 36(3)
[78] Terrorism Act 2000, Schedule 8, para 36(3A), inserted by the Criminal Justice Act 2003 section 306(1)(4)
[79] In support of this, Assistant Commissioner Haymen of the London Metropolitan Police submitted that the nature of the terrorist threat is now completely different to the threat posed by Irish terrorism. *"Irish terrorists deliberately sought to restrict casualties for political reasons, but that now the threat is of "terrorist attacks designed to cause mass casualties, with no warning, sometimes involving the use of suicide, and with the threat of chemical, biological, radiological or nuclear weapons".*
[80] http://www.publications.parliament.uk/pa/cm200506/cmselect/cmhaff/910/91006.htm

The House of Commons was intensely divided with John Baron MP observing at a later attempt by the Government to secure 42 days pre charge detention, having failed with 90 days: *"On the issue of complexity, the Madrid bombings involved 29 suspects, investigations spanning seven countries, 300 witnesses and tons of evidence in electronic and paper form. Why did the Spanish authorities need only 5 days to bring charges, when the Home Secretary is arguing for 42?"* [81]

Former Conservative Party leader Michael Howard, argued that no suspected terrorists who were released under the 14 day regime were later incriminated by new evidence, meaning that the police had never practically needed longer than 14 days and Patrick Mercer MP (now a NI Select Committee member) spoke from personal experience as a British soldier here and claimed that: *"Internment had made matters worse and that he found 7 days pre-charge detention sufficient during the troubles in Northern Ireland."* [82]

The current time limit for detention is 14 days, as the legislative authority for 28 days was permitted to slip away without any further parliamentary rancour on 24th January 2011, as Home Secretary Teresa May allowed an emergency six-month extension of the 28-day limit from July 2010 to lapse.[83]

**Applications for Extension of Pre-Charge Detention Under Schedule 8 Terrorism Act 2000**.

The legal battleground in relation to the liberty of the suspect has since moved to challenging applications by police for an extension of time under paragraph 31 of Schedule 8 of the Terrorism Act 2000.

The procedure was first examined by the then House of Lords in the case of Christopher Ward[84] who had been arrested for the Northern Bank Robbery. The HoL held on a narrow interpretation that the exclusion of an accused from part of the extension application was lawful if appropriate judicial safeguards were in place. The issue as to appropriate judicial safeguards was carefully considered in several applications in recent years.

In Re Duffy's Application [2009] NIQB 31, it was contended that Part III of Schedule 8, in its entirety was incompatible with the applicants rights under article 5 of the ECHR, as article 5(2) in particular provides that an arrested person must be informed promptly of any charge against him, and that suspects can only be arrested on reasonable grounds and that they will be charged and brought before the competent legal authority promptly.[85] The Lord Chief Justice, Sir Brian Kerr, found at paragraph 36, that at the contested extension application HHJ Philpott had been precluded from considering the lawfulness of the applicants arrest and on that basis, the court ordered that the granted extension

[81] Hansard Debate 11 June 2008 http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080611/debtext/80611-0005.htm
[82] http://www.publications.parliament.uk/pa/cm200708/cmpublic/counter/080422/pm/80422s01.htm
[83] http://www.theguardian.com/politics/2011/jan/19/28-day-limit-terror-suspects-lapse
[84] Ward v PSNI [2007] UKHL 50
[85] Brogan v UK (1989) 11 EHRR 117 at para 53, Murray v UK (1995) 19 EHRR 193 at para 67, Harris, O'Boyle and Warbrick Law of the European Convention on Human Rights at pp 122, 146 and 149.

must be quashed. Duffy, who had been arrested for the murders of two soldiers at Massereene, was released from custody, only to be re-arrested before he got to the gate and was charged with the murders, although he was at liberty for that brief 15 minutes.

The broader ECHR incompatibility questions were reserved and later considered In re Colin Duffy (no 2) [2011] NIQB 16 which highlights the need for judicial superintendence of the lawfulness and justification of the arrest, from its inception, and throughout the entire period of pre charge detention, a need which derives from article 5(3) of the ECHR, which embraced the principles of the AF case.[86]

**5. Unlawful Detention**

The statistics in relation to those detained under the Terrorism Act reveal some startling facts. John Horgan revealed in his book published this year 'Divided We Stand'[87] that from 19th February 2001 until 31st July 2011, 2223 people were arrested, with only 634 persons charged, an approximate ratio of 3 out of 4 people arrested under the Terrorism Act being released without charge.

These statistics lead to a grave concern that the arrest power afforded under s41 TACT, so hotly contested in Parliament, is not in fact being used in accordance with parliaments intention that there must be a reasonable suspicion that an offence has been committed, but rather it leads one to fear that the PSNI are in effect deploying a 'disruption policy' ala stop and search, but in doing so, are depriving individuals of their liberty for inordinate lengths of time, on spurious and vexatious bases.

A recent unreported written ruling by HHJ Loughran in relation to the detention of a detained person on 4/11/12 which focussed on the test for reasonable suspicion, concluded that *'intelligence that the detained person was a member of the IRA and was involved in the murder of David Black, does not satisfy the procedural protection envisaged in Duffy no 2.'*

The practical effect of this is that there have been no further applications under paragraph 31 of Schedule 8 of the Terrorism Act 2000 in the last six months since HHJ Loughran's ruling.

**Conclusion**

The shift to a right wing security based conservative approach on these matters is in keeping with broader UK government thinking on criminal justice. The criminal trial process has undergone an almost unrecognisable transformation in the period of the last 15 years as well. The sentiments of Lord Justice Auld quoted in the 2004 case of Gleeson[88] are expressive in this regard: *"A criminal trial is not a game under which a guilty defendant should be provided with a sporting chance."*

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[86] SoS for the Home Department v AF [2009] UKHL 28, paragraph 65 which stated *'non disclosure cannot go so far as to deny a party knowledge of the essence of the case against him, at least where he is at risk of severe consequences'.*

[87] Page 160 Divided We Stand – The Strategy and Psychology of Ireland's Dissident Terrorists. John Horgan is Director of the International Centre for the Study of Terrorism at Pennsylvania State University.

[88] R v Gleeson [2004] 1 Cr App R. 406

Not giving the defendant a sporting chance has seen the introduction of Bad Character evidence,[89] Special Measures applications[90] for pre-videod evidence, anonymous evidence, screens from defendants and the public, an easier pathway to adverse inferences from silence[91] (which is constitutionally illegal in America under the 5th Amendment) as well as wholesale relaxation on the rules of hearsay.[92]

It is a regrettable legislative fact, that the crucial aspirations to repeal the 'temporary' emergency provisions here, and which was fundamental to the wider consensus of the Good Friday Agreement, was simply dealt with as follows; emergency legislation specific to this jurisdiction was repealed, however the provisions themselves were permanently legislated for on a UK basis from Westminster:

- the Justice and Security Act 2007 merely reintroduced many emergency powers permanently – including provision for non-jury trials, and stop, question and search powers for soldiers;
- with the Terrorism Act 2000[93] effectively putting the Temporary Emergency Provisions legislation on a permanent legislative footing, with the only apparent concern of Parliament being the length of time that the liberty of the subject may be withheld for without charge.

It remains to be seen with the devolution of Justice powers whether or not the commitments agreed as part of the democratic franchise which mandated the current constitutional arrangements, will in fact be implemented.

[89] Article 3 Criminal Justice (Evidence) (NI) Order 2004.
[90] Criminal Evidence (NI) Order 1999
[91] Article 3/4/5/6 Criminal (NI) Order 1988
[92] Sections 114 – 136 Criminal Justice Act 2003
[93] **SUPERVISION** s36 of the Terrorism Act 2006 (which was introduced after the 7/7 Bombings) requires the appointment and annual report by an Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006. The current reviewer David Anderson QC in his most recent report advocated that consideration should be given to the provision of bail being made available to detained persons under the Terrorism Act. However there are still certain special measures applicable only to Northern Ireland, which had their origins in Part VII of the Terrorism Act 2000 but which are now contained in the Justice and Security Act 2007, which are the responsibility of a separate Northern Ireland reviewer, Robert Whalley CB.

# Policing accountability

## Mick Beyers, PhD, MSW, former CAJ policing programme officer

The concerns of CAJ and others that there would be significant resistance to the Patten reforms, including the robust system of accountability Patten and the Agreement had envisaged, were quickly borne out. The draft legislation and implementation plan proposed by the British Government in 2000 to give effect to the proposals were so emasculated they bore little relation to the original Patten recommendations. In response one of the Patten Commissioners, Clifford Shearing claimed, "The Patten Report has not been cherry-picked, it has been gutted."It took international pressure and a commitment in the 2001 UK-Ireland Weston Park Agreement for a new implementation plan and legislation in 2003 to take forward many of the Patten recommendations, despite this some crucial reforms have since been undermined or rolled back.

### The Patten Commission: Accountability

The Patten Report proposed a clear and robust system of accountability designed to ensure far greater accountability than in the past. Accountability is a crucial principle in the report and is understood as absolutely critical to human rights. My focus is on those external accountability mechanisms which were to oversee policing but it is important to remember that this is only one side of the coin. The other side of the coin is internal accountability (police holding themselves and each other to account). This is why internal police reform, including a change in police culture, is absolutely vital to the establishment of an accountable, rights based police service. With respect to thinking about accountability 'gaps' and the rollback in core concepts let us look first at the Policing Board.

### The Policing Board and 'national security' policing

The most critical issue with respect to the Policing Board is that they have no accountability remit no oversight powers for the most high-risk area of covert policing. A great deal of covert policing, both historically and currently, is focused on what the St Andrews Agreement referred to as covert 'national security' policing, which encompasses surveillance and other intelligence but also specifically the running of agents and informants within paramilitary groups. This is the area of policing and security policy that has given rise to many of the most serious human rights concerns of 'collusion' with the State and of its agents, including its informants, acting outside of the rule of law and being involved in serious crimes including murder. The problem is that in 2007 primacy for 'national security covert policing' was transferred to MI5 which amounts to a serious gap in the accountability framework. In the spirit of transparency it would also be useful if the term 'national security' were defined which it is not.

It remains impossible to tell the extent to which MI5 are operating within or outside of the law as their role falls outside the remit of the post-Patten accountability bodies. Beyond the limited RIPA (Regulation of Investigatory Powers Act 2000) legislation it is not

clear what written standards and parameters MI5 is to abide by, if any, in relation to agent handling. In theory, the Policing Board are to use their Special Purposes Committee to engage with MI5 but it is an ineffective mechanism. The basis of the engagement is that MI5 can decide the agenda and are not compelled to disclose anything to the Board. This is not holding an agency to account. This is in direct contrast to Patten which recommended transparency with respect to covert policing *policy* (codes of practice, legal and ethical standards, etc) and robust accountability bodies. Patten recommended the establishment of a "*Commissioner for Covert Law Enforcement in Northern Ireland"* overseeing surveillance and the use of informants, with inspection and disclosure powers over the police *and* other agencies "to ascertain if covert policing was being used within the law and only when necessary."This Commissioner was never established.

The transfer also compromises the accountability of PSNI officers working on 'national security' matters. CAJ obtained under freedom of information from the Northern Ireland Office (NIO) what was described as a 'memorandum of understanding' (MoU) on 'National Security and the Policing Board'. It subsequently transpired that the Policing Board had never formally entered into the MoU which was not legally binding but nevertheless sought to restrict PSNI accountability to the Policing Board. The document is actually a list of restrictions on the Policing Board's role including listing the types of information the Chief Constable should not tell the Policing Board, even in confidential sessions. These restrictions also apply to the Special Purposes Committee. The MoU stipulates:

- ...the Policing Board "has no role in National Security matters or related executive policing decisions."...but given the Board's role in police efficiency and effectiveness it "needs to understand how National Security issues are handled";
- ...Policing Board members questions on matters that "indirectly touch upon National Security" should not be answered if it might damage national security interests;
- ...the Chief Constable should refer any such requests relating to "past, present or future" national security to MI5 or the NIO, and the Chief Constable must consult with the Secretary of State if in any doubt whether information falls into this category;
- ...the Chief Constable must not tell the Policing Board any information from or relating to MI5 without MI5's authority to do so.

So, in effect PSNI officers, up to and including the Chief Constable, working on national security matters are not accountable to the Policing Board but rather to the NIO. This is despite the then Prime Minister Tony Blair assuring Parliament that PSNI officers working with MI5 would be 'solely accountable' to the Chief Constable and Policing Board. CAJ has published extensive research into the accountability gap created by the transfer of primacy for 'national security' covert policing to MI5 which has profound implications for the administration of justice and human rights in this country, and rolls back the commitments in the peace agreements.[94]

[94] CAJ '*The Policing You Don't See* Covert policing and the accountability gap: Five years on from the transfer of 'national security' primacy to MI5' November 2012.

**District Policing Partnership (Boards)**

The fate of Patten's local 'District Policing Partnership Boards' (DPPBs) is a clear example of the notion of 'roll back'. Patten used the term 'Board' to denote what were ultimately titled District Policing Partnerships (DPPs) would have sufficient funds to encourage other forms of 'policing' not centred on the police, this was pivotal to implementing the multi-agency model of policing envisioned by Patten. So the DPPs would be empowered to buy in a range of policing services which would have facilitated local 'bespoke' policing. That concept was excised in subsequent policing legislation. CAJ's view at the time was that the British government were interested in creating DPPs that operated in a mere consultative capacity versus the oversight role in respect of local police envisioned by Patten. In terms of 'rollback' through the legislation the core concept that was critical to facilitating a more decentralized model of policing, a form of policing which would foster community 'ownership' of policing, was knocked in the head.

What we ended up with was DPPs with a heavily restricted remit. There was a tendency for DPPs to be police led rather than community led, and overall the concept of a more 'radical' DPP model that facilitates 'policing in partnership' or that brokers a "constant dialogue at local levels between the police and the community" - to ensure democratic accountability as Patten envisioned – has never been realized.

In May 2012 the DPPs were amalgamated with the Community Safety Partnerships which were established in parallel with DPPs via the Whitehall-controlled NIO. At the time CAJ expressed concern that this amalgamation would be another opportunity to make this mechanism even less robust by further diluting the core concepts behind the DPPs. My view is that this has come to pass. In the current model (Policing and Community Safety Partnerships - PCSPs) – what we have is a 'Policing Committee' which functions as a sub-group of the main body of the partnership. So in effect the aspect of policing accountability has been separated and sidelined.

In terms of transparency and holding public meetings, Patten stated:

> **We recommend that District Policing Partnership Boards should also meet in public once a month, and procedures should allow for members of the public to address questions to the Board and, through the chair, to the police**. (para 6.37)

The following paragraph recommends the PSNI should take steps to improve transparency stating *"the presumption should be that everything should be available for public scrutiny unless it is in the public interest – not the police interest – to hold it back. It follows that there should be readily available and clearly drafted notes on matters which the public are likely to be interested to see...Transparency is not a discrete issue but part and parcel of a more accountable, more community-based and more rights-based approach to policing."*

However, there has never been any explicit reference to public meetings in the original policing legislation (another rollback) but the PCSPs have a code of practice and the Policing Committee is to hold a minimum of four public meetings per year with District Commanders on policing issues and at least one to consider police performance. This means that the majority of the business of what was originally conceived as the local

accountability mechanism for policing will now involve discussions behind closed doors, with decisions made behind closed doors, with the result that a fundamental aspect of the accountability and participative role of the partnerships is removed. The PCSPs will do the bulk of its work in private, thus following the closed model of the Community Safety Partnerships – an extension of NIO culture not in the spirit of Patten.

Another critical element that has hindered the full implementation of Patten and police reform broadly is funding – who controls the purse strings. According to Maurice Hayes who was a Patten Commissioner, the lack of funding was "... a ploy to emasculate the Patten bodies and another attempt to dilute the effect of the Report".[95] Dr Hayes said the lack of funding to the DPPs was predicated on "the Northern Ireland Office distrust of elected members [which] caused the DPPs to be hobbled by being deprived of resources while the Community Safety Partnerships, which were quite unnecessarily brought in, in parallel, were funded." In terms of funding, there is some good news. With the amalgamation of the CSPs and DPPS the two funding lines have been brought together and are now under the control of the Joint Committee (which represents the Policing Board and Department of Justice (DoJ)), which means the Board (through Committee) has responsibility for the delivery of the community safety brief and is the single point of contact on all funding issues. The Board are jointly responsible with the DoJ for setting the strategic priorities for the delivery of community safety at a local level, approving delivery and funding at a local level, and for administering the money. The joint responsibility with DoJ only applies to the community safety remit; the policing aspect of PCSPs is 'restricted' and is the sole responsibility of the Policing Board. From a human rights and local accountability perspective, having funding decoupled from NIO may constitute a significant victory.

**Office of the Police Ombudsman**

Another product of the peace process was the establishment of a truly independent police complaints mechanism in the form of the Police Ombudsman's Office. In terms of 'mapping the rollback', under the tenure of the second Police Ombudsman we had a very different state of affairs from that of 2007 when the first Police Ombudsman Nuala O'Loan left Office. Then public confidence in the police complaints mechanism was high and the Office was regarded internationally as an instance of exemplary police oversight. The 'contested area' where the 'roll back' is most visible is with respect to historic cases some of which amount to national level policing controversies and include a number of high-profile, politically sensitive investigations into past police activities, including the first Ombudsman's landmark 'Operation Ballast' report dealing with RUC Special Branch and UVF collusion. Under the tenure of the second ombudsman however three detailed investigative reports into the Police Ombudsman's Office by CAJ, the Department of Justice (the McCusker Report)[96] and the official Criminal Justice Inspector (CJI)[97] found

[95] CAJ 'Policing with the Community: Patten's 'New Beginning' 10 years on' Conference report, 18 November 2009, page 11

[96] McCusker, Tony 'Police Ombudsman Investigation Report', Office of the Minister of Justice, June 2011 (McCusker Report). See: http://www.dojni.gov.uk/publications/police-ombudsman-investigation-report.pdf

[97] Criminal Justice Inspector Northern Ireland Report "An Inspection into the independence of the Office of the Police Ombudsman for Northern Ireland" published on 6 September 2011.

serious failings and a 'lowering of independence' within the Office under the tenure of the Second Police Ombudsman. The CAJ report identified serious concerns about political and police interference in the then workings of the Office and the CJI report concluded that the way in which investigations of historical cases had been dealt with had led to a lowering of its operational independence and recommended the suspension of most historic investigations until reforms in the Office had taken place. The second Police Ombudsman subsequently resigned and a successor was appointed. Reform to the Office has now taken place and following a positive appraisal by the Criminal Justice Inspector early in the year the office has again been deemed fit-for-purpose to undertake historic investigations. Yet there still remain significant restrictions on the Ombudsman's powers which require legislative change that is slow in coming. So rebuilding the integrity of the Office is a work in progress, it's a roll-back of the rollback – or the regression - that was witnessed post-Nuala O'Loan.

**Conclusion**

The Patten Commission was adamant that policing - to be properly 'democratic' and accountable – that some control of policing must be devolved downward and outward thereby transferring some 'ownership' of policing to local communities. In the decentralized, multi-agency model of policing proposed by Patten, the police would not exercise a monopoly on security provision. This reflects current thinking on policing that less centralized and less hierarchical policing structures are more responsive to local communities, increasing possibilities for enhanced relations and 'policing by consent', decreasing opportunities for 'political policing'. In other words, Patten did not recommend a (traditional) British system of policing which - to a large extent - is exactly what is currently in place.

I'll leave you with a final thought 'Mapping the Rollback' can be defined in this context as an exploration of how a State holds onto its power and maintains a security agenda rather than reform. An academic commentary has pointed to the considerable challenge of reform to ordinary policing in the context of what they refer to as a past 'security state' which was:

> ...underpinned by numerous personal relationships between the Northern Ireland Office and the Home Office, the RUC and British police forces, and very close working relations between MI5 operatives working in Ireland and those in Britain. Behind the scene and directly responsible to the Prime Minister is the Cabinet Office Joint Intelligence Committee on which sit the heads of GCHQ, MI5, MI6 and the Defence Intelligence Staff... All of these groups have a material interest in the problem of policing being defined in traditional security terms rather than being recast as a partnership with communities.[98]

Developing a robust system of accountability faces considerable challenges in this context.

[98] Hillyard, Paddy & Tomlinson, Mike 'Patterns of Policing and Policing Patten' Journal of Law and Society 27:3 (2000),pp 394-415; p396.

## Specialist Session 4

## Dealing With the Past

This session, chaired by Professor Bill Rolston of TJI, reflected on the limited provisions within the peace agreements relating to dealing with the past, including services for victims.

**Speakers:** Kartik Raj of the International Secretariat of Amnesty International, Alan McBride, WAVE Trauma, Mark Thompson, Relatives for Justice, and Dr. Patricia Lundy, University of Ulster.

From left to right: Mark Thompson, Adrienne Reilly, Kartik Raj, Alan McBride, Patricia Lundy, Bill Rolston and Colin Harvey

Mark Thompson


Alan McBride


Dr. Patricia Lundy


Left: **Kartik Raj** from Amnesty International who presented the then preliminary findings of the Amnesty research report "*Northern Ireland: Time to Deal with the Past."* The report was published in September 2013 and is available at:http://www.amnesty.org/en/library/info/EUR45/004/2013/en

# Victims Services 15 Years on

**Alan McBride, Wave Trauma Centre**

**Introduction**

It's hard to believe that it's been fifteen years since the Good Friday Agreement was signed. I can remember that night as though it were yesterday. I was at Stormont and witnessed some truly remarkable scenes as various political parties held press conferences on the lawn, heckled by supporters of the DUP. There was a buzz in the air that I had never felt before and I allowed myself to get excited.
It was a few days before we got to see the detail and although not a perfect agreement, it definitely represented a way forward. I remember talking it over with my family who were very divided on the matter but I was a believer. I joined the yes campaign and was involved in a number of events and rallies, including the famous U2 gig at the Waterfront Hall.

I had invested a lot in the peace process and for me the Good Friday Agreement (GFA) represented payday. The IRA had murdered my wife about five years before so life had been tough. For a number of years I waged a very personal campaign against Gerry Adams, protesting at Dublin airport when he was coming back to Ireland from the US and chasing him around New York, Washington and Boston when he was booked to speak at various Sinn Fein fundraisers. I wrote to him on several occasions, left voice messages for him on his constituency answer phone and challenged him when he was on the radio. None of this I regret as it was simply where I was at the time.

But time moved on and I moved along with it. I came to see the 'Troubles' from a different perspective. Paramilitaries were part of the problem but it was too convenient to simply hang the cause of the 'Troubles' on them. I think the GFA recognised this and so it included a range of measures to get us out of conflict and lay the foundations for a lasting peace.

Fifteen years on and I have to say that it has been a partial success. Is there anyone in this hall who would doubt the monumental changes that the GFA has brought to life in Northern Ireland? Like many of you I am old enough to remember what this place used to be like, when you were afraid to go outside your own area at night. When Belfast City Centre was deserted after teatime and the report of one sectarian attack after another filled our news bulletins. Those days are gone and that is due in part to the GFA.

A couple of years ago I was at a function in Washington DC run by the NI Assembly. They were showing a DVD to potential American investors which for obvious reasons showed Northern Ireland in all its glory. It was all there, the Titanic Centre, the MTV Awards in Belfast, the new Visitor Centre at the Causeway – golfers McIlroy, Clarke and McDowell with their hands on yet another major, people shopping at House of Frazer and enjoying the craic at the Crown Bar. The sun was even shining and the place looked amazing, so amazing in fact that I turned to the person beside me and jokingly said, 'I wouldn't mind going there on holiday'.

It wasn't that I didn't recognise the Northern Ireland pictured in the DVD, I did, but it only told half the story. A few weeks later I was at the home of Micky Cairns, a young man from Ardoyne who took his own life, the second son in the family to do so. When I was there Micky's mum introduced me to three other mothers from Ardoyne who had all lost children to suicide. This is the other side of the Northern Irish story. Northern Ireland has a suicide rate that is about twice the national average, youth unemployment is amongst the highest in the UK and we have a greater number of young people leaving school without a recognised qualification. When it comes to legacy issues it is also a case of 'could do better'. The failure of the Executive to produce a strategy for cohesion, sharing and integration must be seen as a failure, particularly when you take into consideration the cost of division in this society has been calculated at 1.5 billion pounds annually.

The Good Friday Agreement came out of almost 30 years of armed conflict that left over 3,500 people dead and a further 40,000 injured, yet, surprisingly in my view, it had very little to say about victims and survivors. Essentially it came down to a couple of rather vague commitments, to first of all, *acknowledge and address the suffering of victims,* and secondly, *to provide services that are sensitive to their needs, through both statutory and community organisations.* It also included the noble aspiration to build a *peaceful and just society as a true memorial to the victims of violence.*

**1. To acknowledge and address the suffering of victims**

I have worked with individuals and groups affected by the 'Troubles' for over ten years and it continues to frustrate the life out of me when people say that 'nothing has been done for victims'. To be frank, it is simply not true. Some time ago I calculated that almost a billion pound has been spent on addressing the suffering of victims in Northern Ireland, for example, money spent on public inquiries, the setting up and running of the HET, the Police Ombudsman, the Northern Ireland Memorial Fund, the Victims Commission and the new Victims Service. This estimate does not include the money used to run groups which I will come to later.

When someone says 'nothing has been done for victims', what they really mean is that they don't feel they have benefitted from what has been provided. And they would be right sometimes, as these initiatives have worked for some people but they have not worked for all. There are only a few select cases that were offered a public inquiry and where inquiries were held the findings were often disappointing to the families – in fact, in some cases, it could be argued that the only people to benefit from an inquiry were the legal profession who made quite a bit of money on the back of it. The Historical Enquiries Team (HET) have also produced mixed results with some families reporting a good service, whilst others felt very let down by the process, and with regard to injured victims, their cases were not reviewed at all. The difficulties experienced by the Police Ombudsman when it comes to historical cases has been well documented in several reports, and the previous Ombudsman Al Hutchinson stated before he left office, that with the current resources available to him that it would take 50 years to investigate all the cases.

The only agency providing practical help to victims of the 'Troubles' has been the Northern Ireland Memorial Fund, but here as well it has not been all plain sailing. The Fund has helped thousands of victims since its conception in 1998, but often the schemes

that were set up were inflexible and did not always respond to real need. For example, the Christmas payouts made a couple of years ago to injured people offered them a £500 voucher for a short break. If you were an injured person and really needed a tank of oil, too bad, you were only offered a short break, even though that was not your real need, nor could you afford the spending money to go on holiday. Another example is of a family I supported through the trial of the person accused of murdering their son. The case was truly gruesome with regard to the way this young man died and the family were quite distraught. When the trial concluded I thought the husband and wife could benefit from a weekend away from it all, but when I contacted the Memorial Fund on their behalf I was told they were not eligible to apply as they already had a short break, even though it was many years before. I could go on and point out the failings of the last Victims Commission which initially employed four Commissioners but delivered very little by way of change for those affected by the conflict.

The best that could be said with regard to all of this is that it has been piecemeal – it has worked for some but not others. But what we cannot say with any amount of credibility is that nothing has been done.

**2. To provide services that are sensitive to their needs, through both statutory and community organisations**

At one time there were around 70 groups funded to provide services to victims and survivors. Many of these groups did fantastic work providing a range of services from counselling and complementary therapies to social support. Some of the groups were small, catering for small numbers of victims, other were much larger and were able to develop skills in advocacy, welfare advice and other skills appropriate for the care of those that suffered so much. It could be argued that the only help victims of the 'Troubles' received was through a group or the Northern Ireland Memorial Fund.

For a small number of groups the work would have been more questionable and a case could be made that rather than assist the healing process they actually got in the road of healing. These groups quite often became gatekeepers for victims and survivors, led by strong personalities who had a particular axe to grind with the political process. Often these groups would have aligned themselves with political parties who shared similar views. This is not to deny that much needed support was given to victims and survivors, but their sense of loss was also sometimes exploited by the group itself and also by politicians who wanted to undermine the political process at particular strategic points. With regard to 'statutory provision' much has also been done, including the setting up of the Trauma Centre in South Belfast and the Everton Centre in North Belfast. Both these centres catered in the main for individuals and families with psychological problems arising from the 'Troubles', but who were not part of groups. In addition to this, four Trauma Advisory Panels (TAPs) were set up, one in each health trust area. The TAP's were intended to bring greater co-ordination between community and statutory provision. The TAP's did some good work and served as an effective interface between workers in the respective sectors, but it could also be argued that they failed to fulfil their potential and the fact that they have now been effectively culled would be evidence of this.

The latest statutory initiative to support victims and survivors of the 'Troubles' has been the Victims Service. The Service was set up in April 2012 to act as a kind of 'one stop

shop' for those requiring help. The work of the TAP's and the Northern Ireland Memorial Fund has been merged into the work of the Service, as has the Victims team responsible for funding groups that were previously part of the Community Relations Council. The Service has been running for little more than a year so it is probably too soon to offer a definitive view on its success or failure. That said I do have a number of early concerns that I wish to share with you.

First of all, I feel there is a lack of collaboration with community organisations, who for the most part have been the sole provider of care to many of those affected by the 'Troubles'. To illustrate this point I want to cite the example of William, (not his real name). William first came to WAVE about three years ago. At that time he was going through the HET process in relation to his brother's murder. William was severely traumatised and could hardly talk of his experience without breaking down in tears. He was extremely paranoid and did not want to mix with others. WAVE initially provided psychotherapy for William which lasted about a year. He also received third party help with regard to his involvement with the HET process – this resulted in the final report being amended following some concerns that were raised.

All of this has been very beneficial to William. He no longer needs psychotherapy and has been coming along to several groups in WAVE where he mixes well. He has also spoken publicly about his brother's death which would have been unthinkable only a few years before. William attended the Victims Service to be assessed, (the Service insist on everyone wanting help to come to them for assessment), and once the assessment was complete, it was recommended by the assessor that he receive psychotherapy. In my view this is a backward step for William, but I am not necessarily blaming the assessor. William can still become emotional when he talks about his brother and if I was assessing him I too might have referred him for counselling. The point I wish to make is that at no point did the Service contact WAVE to ask about William in order to develop a case history so as to decide on the most appropriate intervention.

I would have thought, given the years of working in the sector, plus the fact that WAVE were providing help to William, that we should have been contacted but no one got in touch. William's story is not unique and highlights the failure to collaborate with other providers to ensure the best possible help.

My second point is around the insistence of the Service that anyone who wants to receive help for their trauma comes to the Service to be assessed, and that the assessment itself can be quite intrusive, with some questions asked even though the Service cannot provide help in that particular area. A few months ago WAVE hosted a round table discussion on the Service with the eminent psychologist Dr David Becker – Dr Becker was quite critical of the assessment used by the Service, pointing out that the assessment itself is an intervention, so to ask a question, for example about debt, or employment prospects, with no help offered in these areas is just plain unhelpful to the victim or survivor.

The assessment itself is not person centred from the point of view that the individual being assessed has no input into the assessment process, other than to answer a number of set questions. Basically, all the power rests with the assessor – they ask the questions and it is they who decide what help is available and where you should go for that help.

The majority of individuals that have been receiving help from WAVE and that have gone to the Service have been referred on elsewhere but not back to WAVE. This raises the question of whether the Service believes that the individual has received good support from WAVE, or can we read into the fact that the individual has been sent elsewhere to suggest that the Service believes the support was poor. Again with no collaboration there would be no way the Service would have an understanding of the kind of support that was available.

Another issue with the assessment procedure is the insistence by the Service that everyone who wants to receive support must go to it to be assessed. This is despite the fact some of the groups have their own very robust and professional assessment process, but this is overlooked. I have heard representatives from the Service talk about a tsunami of referrals – in my view it would make perfect sense to allow the groups to carry out assessments as this would help to reduce the strain on the Service. We could even standardise the assessment and only those groups with the capacity to deliver could be utilised. But that would mean that the Service would have to work in partnership with the groups and this does not appear to be part of their thinking.

My final point with regards to the Service is the lack of acknowledgement felt by some victims and survivors. As was pointed out earlier, the Good Friday Agreement made reference to the fact that victims must be acknowledged. It never went on to specify who was a victim but it was always widely assumed that if you lost a close member of your family then you are a victim of the 'Troubles' and deserving of help. The Service has sought to narrow down the amount of people that are eligible for support, in particular financial help. For example, siblings and grandchildren are no longer eligible to receive financial support. This move takes no consideration for the sense of loss endured, or for the strength of relationship between brothers and sisters. In the example earlier of William, you will note that it was his brother that he lost, and his life was deeply impacted by that event. William would have been receiving help, including financial help, but under the new criteria he would no longer be eligible for this. The loss of victimhood for some that were impacted by the 'Troubles' is a further means of distress.

### 3. A true and lasting memorial to those that suffered in the 'Troubles' will be a peaceful and just society

I will conclude where I started by asking is there anyone in this hall who would deny the positive changes that have been brought about by the Good Friday Agreement. Northern Ireland is more peaceful today by the sheer fact that there is not as many people being murdered, and the streets do feel safer to walk down. Does this mean we have the kind of shared society that was envisaged in the Good Friday Agreement? No it does not, but it is a beginning and we must respect it as such and work with others to see it through to completion.

There are three areas that I feel need further work. First of all the Bill of Rights - this was specifically mentioned in the Good Friday Agreement and there was an extensive consultation which resulted in a draft Bill, but the fact that it has still not been implemented must be seen as a failure. I would like to point out that I don't feel we need a Bill of Rights for Northern Ireland because of the extra protections it would give us – in my view many of these protections already exist in the international treaties that the

British Government have signed up to. I think we need a Bill of Rights in order to make it Northern Ireland specific –that would bring a lot of the protections that exist elsewhere together under one document. That document (or Bill) would then become the corner stone that our society is built upon, one that has rights and responsibilities at its core – the Bill could be something we are immensely proud of, it could be taught in schools and it would be above party politics. But for it to have impact it would need to be realised in all parts of Northern Ireland. Eleanor Roosevelt once famously said, *'for human rights to have meaning they must have meaning in small places like schools and factories and churches, if they don't have meaning there they don't have meaning anywhere'.* This is the challenge for the Northern Ireland Assembly with regard to our own Bill of Rights – it must have meaning on the Shankill and the Falls as well as in the leafy suburbs – this includes how the areas are policed, the extent of paramilitary control that is exercised and the amount of inward investment felt in communities, amongst other issues.

Secondly, more effort needs to be put in to tackling division and laying the foundations for a shared society. The failure of the executive to agree a strategy for cohesion, sharing and integration is reprehensible in my view, and the latest attempt to come up with a blue print ahead of the G8 summit in Fermanagh suggests a certain degree of desperation. This initiative was described by the First Minster as the 'most ambitious ever brought forward on the issue', which maybe says a lot about how poor previous initiatives on the issue have been. Essentially, it amounts to a parking of the most contentious issues, with nothing really new to report. The 10,000 young people given a year's work reminds me of the Ace Scheme that was running when I left school, and the 100 cross community summer schemes, whilst welcome, hardly represents new and imaginative thinking. The removal of all peace walls by 2023 is indeed ambitious but I will wait to see how they intend to do it before getting excited. I also, think the row that developed amongst our politicians who were debating the initiative on BBC's *The View* programme, doesn't give us much cause for optimism.

Finally, and perhaps the biggest failing of all with regard to the Good Friday Agreement was the absence of an agreed mechanism to deal with the past. This is not to deny that attempts have been to relook at past atrocities for some families, via public enquiries and the work of the HET, often with mixed results. The past continues to cast a shadow over the society in so many ways, including the controversial appointment of former prisoners as special advisors, the development of the Maze / Long Kesh, the ongoing work of the HET and Police Ombudsman, the commemoration of various anniversaries and disputes around flags and emblems.

There has been several initiatives to bring some measure of redress to these issues, some from community organisations such as Healing Through Remembering and some on behalf of the state, for example the Eames Bradley report. Sadly, all have met the same fate – the lack of political will in the Assembly. As Northern Ireland continues to make the slow transition from violent conflict and sectarian mistrust to peaceful democracy, this issue needs addressed, if for no other reason than to draw a line in the sand and commit the past to the history books. Examples from conflicts around the world would suggest that the way to do this is not simply to 'forgive and forget', but to remember what happened, acknowledge that wrong was committed, look after the victims, and to move on. Some of this has been done but much more remains to be done, that is why, in my view the rollback with regards to victims and survivors in the Good Friday Agreement is at best a mixed bag.

# Victims Services

## Mark Thompson, Director, Relatives for Justice (RFJ)

**The following is the information provided in slides by Mark for his presentation:**

**THE GFA Promise – under enforcement?**

**Reconciliation and Victims of Violence**

11. The participants believe that it is essential to acknowledge and address the suffering of the victims of violence as a necessary element of reconciliation. They look forward to the results of the work of the Northern Ireland Victims Commission.
12. It is recognised that victims have a right to remember as well as to contribute to a changed society. The achievement of a peaceful and just society would be the true memorial to the victims of violence….
The provision of services that are supportive and sensitive to the needs of victims will also be a critical element and that support will need to be channelled through both statutory and community-based voluntary organisations facilitating locally-based self-help and support networks. This will require the allocation of sufficient resources, including statutory funding as necessary, to meet the needs of victims and to provide for community-based support programmes.

**Victims Service:**

- Victims and Survivors Service (VSS) was first announced 2008 by OFMDFM in a consultation on future services
- To replace existing responsibilities for funding the sector from independent funding body (*Community Relations Council - CRC*) and individual needs programme (*Memorial Fund)* Non Departmental Working Body

**Office of the First and deputy First Minister (OFMDFM) Consultation 2008**

**Core values and aims**

Core Value stated: "The need for victims and survivors to play a part in the building of a more peaceful future, but that as people who have suffered most they should feel safe, should be treated with dignity and should move at their own pace"… "the valuable work carried out by victims groups … should be built upon"

"Aims of the strategy should be to:

- put in place comprehensive arrangements to ensure that the voice of victims and survivors is represented and acted upon at a governmental and policy level
- Secure through the provision of an appropriate range of support services and other initiatives a measurable improvement in the wellbeing of victims and survivors
- Assist victims and survivors, where this is consistent with their wishes and wellbeing, to play a central role, as part of wider society in addressing the legacy of the past and

- Assist victims and survivors to contribute to building a shared and better future.

**OFMDFM Working Groups**

- OFMDFM then established a steering committee with subgroups to take forward a programme of work
- Appointments at discretion of OFMDFM
- Key groups within the sector were excluded

**Evidence to OFMDFM Committee**

- The consultation did not mention assessment – only assessed need
- However rumours emerged in 2009/2010 that all victims would be assessed
- In evidence to OFMDFM Committee, Feb 2011, senior officials made the following statement; "The process for conducting individual assessment and an initial assessment form have been agreed. The skills and qualifications required from those who conduct assessments and the client journey through the Service have also been agreed. Models for individual assessment details, the skills requirements for assessors, number of assessors, recommendations on how and where individuals can be assessed and an agreed basis for a database of victims and survivors."*Hansard Feb 2011*

**Lack of Transparency**

- This evidence to OFMDFM Committee is the first official record that there would be 100% assessment of all victims & survivors
- Assessment will pertain to all needs from mental health to social support, to legacy & casework support
- In April 2011 RFJ sent 28 freedom of information requests which were not answered – we again wrote in July 2011
- Despite repeated verbal and written requests for information RFJ got no indication of what assessment would look like until Nov 2012 when future funding for groups was announced by VSS
- Universal compulsory assessment would be carried out by VSS - what they didn't reveal was that VSS would use Police Rehabilitation Retraining Trust (PRRT)
- Other assessors were subsequently recruited – in the last number of weeks

**Mounting Concerns**

- 2010/11 RFJ became aware that a single tender contract would be awarded to PRRT to conduct assessments – prior to VSS formal establishment
- Announcement by OFMDFM that VSS would be up and running by April 2012 – despite no real detail about its actual purpose, added value and role
- Initially it was stated that VSS would not be a service provider
- Concerns existed about medicalizing victims and survivors and individualizing their

experiences – this equally has implications for conflict resolution as part of transition

- Concerns also existed about the appropriateness of the increasing promotion of less effective therapeutic interventions around conflict related-trauma such as Cognitive Behavioural Therapy (CBT) and Eye Movement Desensitisation Reprocessing (EMDP) – cheaper quick fix short-term methods not normally associated with complex Post Traumatic Stress Disorder.

**Statutory Obligations**

- VSS as now established does not reflect the core values and stated aims of the OFMDFM consultation 2008
- VSS was established without OFMDFM discharging their statutory s75 EQIA & common law duty to consult given the adverse impact the changes would have especially as the end product did not resemble the consultation paper
- VSS awarded a non-competitive single tender contract appointing PRRT to conduct assessments of victims and survivors
- Those people being called first to be assessed are survivors with chronic pain management needs, the severely injured, those in receipt of individual financial needs, and those seeking counselling *(5,000 – 7,000 people this year with assessment costs unknown)*
- If people are not assessed then they cannot be supported by groups and they will not be entitled to receive any assistance from the individual needs scheme - assessment is compulsory
- Those conducting assessment (PRRT) specialize in CBT &EMDR and can refer to colleagues (Futures) – effectively VSS is directing service provision
- This week we have received letters from VSS informing us that specialised training courses are being provided to practitioners on EMDR by PRRT – cost £1,400 per person, bursaries may be available from VSS

**Conflicts of interest?**

- As an Non-Departmental Working Body VSS has yet to appoint a Board of Directors
- As far as we can ascertain OFMDFM civil servants are acting as Directors in addition to setting policy
- In a bid to counter the single tender appointment of PRRT, when raised by ourselves, VSS then appointed Carecall – again a process without an open call for competitive tendering
- The appointed Chair of the OFMDFM Steering Committee re the establishment of VSS has a significant vested interest in Carecall
- The role of Commission for Victims and Survivors (CVS) is to keep under review all matters concerning victims. The structural composition of VSS excludes CVS from direct oversight
- CEO for CVS tasked by OFMDFM to set-up VSS. We believe this conflicted with CVS role of independently championing victims needs and putting their interests first

**Fundamental Flaws**

- Right to individual choice of where a person receives support services and from whom is removed
- Unnecessary therapeutic referrals that are unethical, if not questionable – financially incentivised and open to abuse
- Recovery from trauma is about connection – the process of individualising and medicalising disconnects
- Safety and security, trust, confidence for victims and survivors undermined
- Data-protection – informed consent – confidentiality – *NI Memorial Fund data – who has access?*
- Clear conflicts of interest exist
- Top down
- People will simply not avail of support and refuse to be assessed – masking the true extent of need
- Assessment v's Vetting?
- Control & power – obfuscation, making-up policy and not trusting voluntary & community based approaches

**Knock On Effects**

- Creating an industry where financial reward outweighs empathy, understanding, caring and compassion
- Controlling a sector where choice, community, value and learning are potentially disregarded and not valued
- Promotion of privatised mental health services within the sector
- Disregarding international best practice re complex trauma & assessment
- Driving cheaper interventions on trauma that are shown to be ineffective long term
- Groups are reluctant to publicly speak out given that funding applications are currently being assessed also by VSS;

**Discriminatory**

- That groups specialising in supporting former members of the security forces and their families are funded through Department of Justice (DOJ)
- Therefore they are not subject to assessment or policies established by OFMDFM and VSS despite receiving public finances
- Therefore someone who served in the security forces, with similar needs arising from the conflict to civilians, can access support without being subject to this criteria

**Response from Victims and Survivors**

- RFJ survey of 1,100 families
- The overwhelming number want the right to choice, and do not want continual assessment year on year
- Families explained why they wanted support, where they wanted the support to be

provided, the type of support, and who they wanted it provided by
- It was about safety, trust, confidence, and confidentiality – it is about works for them
- Families said that they were fed up with being 'probed and poked at' 'surveyed' and 'being treated as criminals' 'having to continually prove they are victims and survivors'
- In what other sector would the issue of assessment/vetting in this way prior to receiving support be tolerated?
- And we haven't even touched today on children suffering from the effects of transgenerational trauma and how they will be assessed

**Regulation**

RFJ appreciates and supports the need to:

- Capture information on needs for planning and effectively meeting need in an overall
  strategic way across the sector by government
- Effective targeting and provision of adequate resources
- To conduct appropriate assessment with informed consent and choice of who carries this out and where this takes place
- To ensure competency of professional service delivery
- To ensure that best practice and standards are in place and adhered to
- This needs to be achieved in safe partnership with victims and survivors and not imposed as is currently the case – 'feel safe', 'dignity', 'own pace', 'wellbeing' and 'voice of victims'
- The challenge is how this is achieved in keeping with the spirit and commitments made in the GFA.

# The Historical Enquiries Team

## Research Brief: Assessment of Historical Enquiries Team (HET) Review Processes, and Procedures in Royal Military Police Investigation Cases

Dr Patricia Lundy, University Of Ulster

This paper examines the HET's review processes and procedures in Royal Military Police (RMP) investigation cases (hereafter RMP cases). RMP cases involve the fatal shooting of over 150 civilians by the British army between 1970 and September 1973.[99]

In November 2011 the HET had completed 36 RMP case reports.[100] This paper sets out research findings based on the analysis of twenty-four HET reports, relating to seventeen individual RMP cases.[101] As discussed later, there are frequently multiple drafts of reports. The paper focuses on an "independent team" set up by the HET to examine all RMP cases. The team is made up of retired police officers from outside Northern Ireland. A number of issues, about the way in which the HET conducts investigations in RMP cases, are considered. Of particular note are apparent anomalies and inconsistencies in the investigation process where State agencies (in this case the military) are involved, compared to non-state or paramilitary suspects. This raises questions about the ability of the HET to undertake independent, impartial, effective investigations in cases involving State agencies.

### Background

The HET was presented to the Committee of Ministers by the UK government as part of a 'package of measures' which professes to fulfil its obligations under Article 2 of the ECHR. Article 2 requires an independent, effective, prompt and sufficiently transparent investigation into deaths implicating State agencies.[102] The Court has specified that with respect to cases involving State agencies, those responsible for deaths must be made properly accountable. In order to attain accountability, an investigation must be effective. Any deficiency in the investigation process, which undermines this, is unlikely to comply with Article 2 standards.

[99] There is some evidence to suggest that RMP investigations may have extended beyond 1973.

[100] Freedom of Information Request number F-2011-03623, received November 21, 2011, on file author. "36 review summary reports have been delivered to families." Each victim's family receives a HET report detailing the nature of the review conducted and a response to unresolved questions raised by the family.

[101] The sample of 24 HET reports is made up of 12 individual HET case reports completed between 2010 and 2011; a further 5 individual HET case reports completed in 2006-7; the remaining 7 reports are various drafts of recently completed reports. These reports are part of a much larger sample of HET reports collated by the author from 2006 to the present and cover all categories of deaths unionist civilian/ nationalist civilian/ paramilitary/ security forces. The most recent HET report received by the author was December 2011. Interviews were also conducted with victims' families, NGOs and members of the legal profession.

[102] It is not necessary to rehearse the obligations fully in this paper. See Lundy, P. (2009) Can the Past be Policed?: Lessons from the Historical Enquiries Team Northern Ireland, Law and Social Challenges, Vol.11, pp.133-138 download at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1425445.

With this in mind, the paper examines the following aspects of HET investigation processes in RMP cases:

- 'Pragmatic approach'
- Interviews under caution
- Pre-interview disclosure
- Pre-prepared written statements
- Robustness of interviews
- Equality of treatment
- Editing and changes to reports
- Effectiveness of reviews
- Tracing and Verification of illness
- Policies and procedures
- Accountability

**Context**

The Saville Inquiry revealed that between 1970 and September 1973 an informal agreement (hereafter Agreement) existed between the Chief Constable of the RUC and the GOC of the British army about the conduct of investigations in fatal shootings involving the military.[103] The Agreement specified that soldiers suspected of involvement in a fatal shooting episode would be questioned by the Special Investigations Branch (SIB) of the Royal Military Police (RMP); and the RUC would take responsibility for interviewing civilian witnesses and all other aspects of the investigation. These arrangements meant that soldiers involved in fatal shooting incidents were rarely interviewed by the RUC and consequently any opportunity for independence was negated. An RUC policy at the time directed that the RUC should forward all available evidence to the RMP prior to an interview taking place with soldiers.[104] In effect the RMP rarely received witness statements before military personnel were interviewed. The interviews appear to have been conducted informally with no assessment of criminal responsibility. The role of the RMP officer seems to have been simply to record the facts as described by the soldier, rather than to probe or question with a view to ascertaining whether or not the action had been justified or whether the soldiers' actions were lawful. The procedure appears to have been to question soldiers as witnesses, rather than to interrogate them as suspects, thereby dispensing with the need for formal cautions. The adequacy of RMP investigations was examined in the Saville Inquiry; the following evidence from a military witness captures the statement-taking process: *"It was not a formal procedure. I always wore civilian clothing and the soldier was usually relaxed. We usually discussed the incident over sandwiches and tea."*[105]

[103] Report of the Bloody Sunday Inquiry, The Rt Hon The Lord Saville of Newdigate (Chairman) The Hon William Hoyt OC, The Hon John Toohey AC, Volume 1X, HC29-IX, TSO, p.12-13, para 173.22-173.23. A full transcript of the proceedings is available at http://www.bloody-sunday-inquiry.org.uk

[104] The 'RUC policy' is referred to in most of the HET RMP case reports examined.

[105] Witness INQ2052, see also witness INQ1831, INQ3, a full transcript of the proceedings is available at http://www.bloody-sunday-inquiry.org.uk

In 2003 these arrangements were judicially reviewed in the Kathleen Thompson case.[106] Sir Brian Kerr, Lord Chief Justice of Northern Ireland, concluded that investigation into Mrs Thompson's death was not effective and it is questionable whether the Chief Constable of the RUC had the legal authority to delegate the critical responsibility of interviewing soldiers to the RMP. It is worth quoting at length what Sir Brian Kerr LCJ stated, "…the soldier who effectively discharged the shot which caused the death of Mrs Thompson and those who were with him at the time were interviewed by a member of the Royal Military Police. I do not consider that this satisfied the duty imposed on the police at the time to properly investigate this fatal shooting. In my view it was not open to them to delegate that critical responsibility to another agency such as the Royal Military Police. Quite apart from that however, the fact that each of the interviews cannot have lasted any more than half an hour; the fact that clear discrepancies appear in the statements made, discrepancies which have not been the subject of further challenge or investigation, are sufficient to demonstrate the inadequacy of the investigation into the death of the deceased… By any standard it is clear that the investigation into the death of Mrs Thompson was not effective… He went on to say, "even allowing for the constraints that might have obtained at the time and the difficulty in visiting the locus where the shooting happened, I am satisfied that a more rigorous examination than in fact took place ought to have occurred. It is therefore clearly demonstrated by the applicant that this investigation was not adequate". This raises concerns about the appropriateness of more than 150 RMP investigations conducted under the above impugned arrangements, which are currently under review by the HET.[107]

In June 2007, a number of human rights NGOs and legal representatives held a meeting with senior HET management to discuss unsatisfactory review reports in a number of RMP cases and other related matters.[108] The HET accepted that it 'had dropped the ball' and acknowledged deficiencies in the reports. It was agreed that all completed and concluded RMP case reports, which had been forwarded to families, would be recalled. HET further agreed that future reviews would take into account the ineffectiveness of RMP original investigations and this would be reflected/ acknowledged in reports to families. A form of words to this effect was proposed by an NGO in a position paper. This is an important point; the HET has been commended for revealing inadequacies in RMP investigations in its reports.[109] It is not clear why the HET did not include this crucial

[106] Mrs Kathleen Thompson mother of six was killed 6 November 1971 by a British soldier of the Royal Green Jackets in disputed circumstances. See, Kerr.J, In the High Court of Justice in Northern Ireland, Queen's Bench Division (Judicial Review), In the Matter of an Application by Mary Louise Thompson For Judicial Review, Ref:KERA3639T.

[107] It is also worth noting that in accordance with the law and practice at the time inquests did not require attendance of soldiers involved in fatal shootings. Instead unsworn statements were usually produced as court exhibits. This meant that there was no opportunity for cross-examination. Thus, original inquests were held on the basis of information obtained from a flawed RMP investigation process, as evidenced by the Saville Inquiry and Sir Brian Kerr's judgement (2003) (see endnote 8 above). It is probable that some victims' families' will submit legal applications to the Attorney General (AG) requesting that he exercise his power under section 14 of the Coroners Act (NI) 1959 to order fresh inquests. Inquests must now comply with Article 2 of ECHR and British soldiers involved in fatal shootings are compellable witnesses. The AG has already ordered fresh inquests in the case of Daniel Hegarty and the 'Ballymurphy cases' (the latter involved the deaths of 11 civilians). There are over 150 RMP cases.

[108] The NGOs in attendance included BIRW, CAJ, PFC, and also a legal representative and the author.

[109] Credit for highlighting these issues, and the subsequent changes to HET reports that reveal inadequacies in RMP investigations should go to NGOs. Copy of minutes June 2007 NGO/HET meeting, and PFC Position Paper, are on file with the author.

information in earlier reviews, despite the information being in the public domain.[110] As discussed later, the reports subsequently completed differ significantly in content and conclusions; and a form of apology is offered by some individual soldiers. The subject of tracing was also raised. The HET accepted that it had limited success in identifying, tracing and interviewing suspects and witnesses in RMP cases and acknowledged that this had the potential to undermine public confidence in the HET. Up to that point only one soldier had been identified, traced and interviewed by HET. Assurances were given that procedures would be reassessed.[111] Internal documents written after the above HET/NGO meeting reveal considerable debate over identifying, tracing and interviewing military personnel. The following was stated in one such document, "the HET needs to ensure that any policy change does not have a detrimental impact on our relations with the MOD… not only in terms of day-to-day co-operation but also public disquiet."[112]

The HET subsequently set up a 'special independent team' to deal with all RMP cases. The independent team is made up of retired police officers from outside Northern Ireland. This is the context to the current briefing paper.

## Current Position

### Independence

Previous research by the author raised a number of concerns generally about the independence of the HET and the role of retired RUC officers.[113] While the issue of independence is extremely important, it is not the main focus of this current briefing paper. Nevertheless, it is important to note that the HET has recently undergone significant changes to its processes and structural relationship with the PSNI. From 2009 HET refers cases (where realistic evidential opportunities exist) back to the Serious Crime branch ("C2") of the Crime Operations Department. This raises a number of concerns which are reflected in a joint submission by the Committee on the Administration of Justice (CAJ) and Pat Finucane Centre (PFC) to the Committee of Ministers (CM) February 2012.[114] The submission expressed deep concern that since CM assessment of the general

[110] The information was in the public domain from 2000 onwards as a result of evidence given to the Saville Inquiry and Sir Brian Kerr's judgement in the Thompson case was available in 2003.

[111] See Lundy, P. (2009) Can the Past be Policed?: Lessons from the Historical Enquiries Team Northern Ireland, Law and Social Challenges, Vol.11, pp.133-138 download at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1425445

[112] HET, Position Paper, 'Identification, Tracing and Interviewing of Military Personnel', August 2007, copy on file with the author.

[113] The research found that "each stage of the HET process had involvement of significant numbers of long serving retired RUC officers; this included the Command Team, senior managers of intelligence and the entire HET Intelligence Unit. In addition, at the time of the research, a former employee of the Ministry of Defence (MoD) who had been previously stationed in Northern Ireland during the conflict performed the role of Command Secretary, Information Manager and Specified Person of Contact with MoD." The research further noted; "given the very high numbers of retired police officers working in the HET, a crucial matter seemingly overlooked is who has oversight responsibility." See, Lundy, P. (2009) Can the Past be Policed?: Lessons from the Historical Enquiries Team Northern Ireland, Law and Social Challenges, Vol.11, see especially pp.133-148, can be download at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1425445

[114] Joint submission by Committee on the Administration of Justice (CAJ) and the Pat Finucane Centre (PFC) in relation to the supervision of cases concerning the actions of the security forces in Northern Ireland, Submission no. S376, February 2012, p.3-9. Copy available at http://www.caj.org.uk/

measures in 2009[115] a number of developments significantly undermine the HET's capacity to carry out the work it was deemed capable of doing. Concerns were expressed about the independence and effectiveness of the process underpinning reports prepared by the HET. Whilst some families have received a satisfactory measure of resolution from the HET, CAJ and PFC do not accept that it is an operationally independent unit of the PSNI and have some concerns about HET's capacity to conduct effective independent Article 2 compliant investigations where state actors may have been involved in a death. It was noted that without reference to such limitations the HET could be promoted as a model for other Council of Europe states. The submission further stated that "it would be premature for the Committee to close its examination of the issues addressed in Interim Resolution CM/ResDH(2007)73" and "formally requested the reopening of scrutiny by the Committee of Ministers of General Measures relating to the HET in the 'McKerr group of cases'." [116]

**HET Investigation Practices and Procedures**

HET has a number of processes and procedures that it adopts in RMP cases.

## 1. The 'Pragmatic Approach'

The 'pragmatic approach' refers to HET interviews of military personnel involved in fatal shooting incidents conducted 'informally' or not under caution. The soldier is interviewed as a witness, rather than cross-examined as a suspect, thereby dispensing with the need for formal caution. The 'pragmatic approach' appears to be a recent development in HET procedures and as far as can be established is specific to RMP cases.[117] The HET has stated that, 'the methods used for identification, tracing and interviewing military personnel are the same as those employed by the police service'; RMP cases are 'treated as per the guidelines of the Police and Criminal Evidence (NI) Order'.[118] There are very clear codes of conduct and standards that govern criminal investigations. The research indicates that the HET appears to have departed from the accepted standards in RMP cases. It is not within the scope of this briefing paper to detail numerous examples; the following abstracts from recent HET reports are illustrative.[119]

HET procedures in RMP cases are outlined as follows:

*"The question as to whether the HET should interview soldiers who were involved in shooting incidents whilst on duty in Northern Ireland is considered on a 'case by case'*

[115] In 2009 the Committee of Ministers decided to close its examination of general remedial measures on the grounds that the HET could bring "a measure of resolution" to victims' and had "the structure and capacities to allow it to finalise its work", see Interim Resolution CM/ResDH(2009)44.

[116] Joint submission to the Committee of Ministers from the Committee on the Administration of Justice (CAJ) and the Pat Finucane Centre (PFC) in relation to the supervision of cases concerning the actions of the security forces in Northern Ireland, Submission no. S376, February 2012, p.3.

[117] In over 100 HET reports I have studied - covering all categories of deaths (unionist civilian/ nationalist civilian/ paramilitary/ security forces) - none refer to a pragmatic approach.

[118] Direct quote from Freedom of Information Request number F-2011-03623, received November 21 2001, on file author.

[119] Case A: Civilian shot dead by British army in 1971. There are three drafts of this report spanning a period of three years (2007-2010); all three reports are on file with author. Case B: civilian shot dead by British army in 1971, there is one draft recently delivered to the family, a copy is on file with the author.

*basis. Usually, but not exclusively, the determining factor will be around the thoroughness of the original investigation, especially the way in which interviews were conducted by the military, and whether the original interviewers had prior knowledge of any allegations that may have been levelled against the soldiers. Another major consideration is the evidence that was tendered by the soldiers or their representatives at the inquest, and most importantly whether there is any evidence available now that would not have been available to investigators at the time."*

The HET report goes on to acknowledge the inefficient original RMP investigation in this particular case.

"*Very careful consideration was given in this case to re-interviewing soldiers 'A' and 'B' under caution. Crucial aspects of the case, albeit known to investigating authorities at the time, were apparently not used to challenge the versions of events given by the soldiers. The account given by the various civilian witnesses (which are at odds with what soldier 'A' said) is a prime example."*

In spite of this, the HET report goes on to offer justification for adopting the 'pragmatic approach':

"*It is the view of the HET that but for the fact that the Chief Crown solicitor at the time determined that the actions of soldier 'A' did not amount to criminal negligence…, the re-interviewing of soldier 'A' under caution would have been appropriate."*

The HET report goes on to say, *"this pragmatic approach was adopted specifically to give the HET maximum opportunity to obtain as much information as possible for the benefit of [the] family.* ***People who are interviewed under caution as 'suspects' are typically either extremely guarded in what they say, or exercise their right not to say anything at all."*** *[Emphasis added].*

Taking into consideration the earlier discussion about the deeply flawed nature of RMP investigations and Sir Brian Kerr LCJ ruling in the Thompson case (2003), and acceptance by the HET that clear discrepancies appear in the statements made, it is unclear why the HET took the decision <u>not</u> to interview the soldier under caution. The RUC at the time were clearly of the opinion that the shooting was unlawful and strongly recommended prosecution of the soldier in question.

It appears that the HET decision to interview the soldier as a witness (and not as a suspect) fails to challenge and/or reinforces the original procedural inadequacies. Perhaps with the best of intentions in mind, the HET justify this approach as; *"A classic dilemma'. – no information for the families, or adopt a pragmatic approach in the pursuit of some answers for them."*

This implies a 'truth recovery' process. However, the HET cannot offer the guarantees and/or incentives deemed necessary to encourage 'truth recovery' i.e. immunity or amnesty. In the absence of such guarantees suspects would run the risk of self-incrimination.

Participating in such a 'pragmatic process' <u>does not</u> appear to reveal any greater level of

substantive information than previously available in the original papers. Statements tend to be a repetition of the original argument advanced in the RMP interview. The process does however offer the soldier an opportunity to bolster his original statement by plugging any gaps in his defence and to include some additional descriptive self-serving detail.

Importantly, the research found inconsistencies in HET decision-making to interview military suspects under caution or 'informally'. In another RMP case where the DPP also directed that charges should not be brought against a soldier, a different approach was adopted. In this case the soldier was interviewed in the presence of his lawyer at their offices under caution.

**Tracing and Verification of Illness**

In a number of cases the HET were unable to identify and trace soldiers responsible for the fatal shooting of civilians and/or key military eyewitnesses.

In some instances, where soldiers have been identified and traced, ill health is a factor in the decision not to interview the suspect under caution or otherwise.

In one instance the HET state that the suspect (soldier B) "is suffering from dementia and a heart condition and was unable to assist with the review." But the report goes on to give some limited detail about an interview that seems to have taken place; including soldier B's expression of regret.

Importantly, it is evident that the verification of illness (i.e. medical evidence) of soldiers directly involved in fatal shootings in RMP cases is <u>not</u> always confirmed and/or sought by the HET. The process involved is not transparent.

It was confirmed in a recent meeting with Dave Cox (HET Director) and other senior staff that the HET do not always seek verification of illness with regards to soldiers directly involved in fatal shootings in RMP cases (i.e. medical evidence).[120] In addition, further evidence is provided by a member of the legal profession who recently received written confirmation from the HET that medical evidence was not sought in his client's (RMP) case which involved the death of an eleven year old boy (copy of letter on file with the author).

**Issues to be considered include**

- In order to comply with Article 2, investigations must be effective and transparent. In this regard the 'pragmatic approach' raises serious concerns.
- There are very clear codes of practice, standards and procedures which govern criminal investigations. The HET appear to depart from the accepted standards and justify this by calling it a 'pragmatic approach'. This raises an issue as to whether the HET is acting outside its authority and powers.

[120] Meeting, 8 February 2012, held in CAJ Office, also in attendance were Patricia Lundy and Gemma McKeown (CAJ), minutes of the meeting are on file with the author.

- The nature and conduct of 'informal' interviews (sometimes conducted in the soldier's own home) is not clear.[121]
- The research also found inconsistencies in HET decision-making whether to interview military suspects under caution or 'informally'.
- More generally, the 'pragmatic approach' appears to be a recent development in HET procedures and as far as can be established is specific to RMP cases. This raises questions about equality of treatment and procedural impropriety; some suspects appear to receive more favourable treatment than others.
- Differentiation in treatment raises questions about the HET's impartiality in conducting investigations into cases concerning State agencies.
- Legal advice is required to determine whether a 'pragmatic approach' could prejudice any future prosecution. And/or whether this amounts to an abuse of process.
- Are families aware of the risks (if any) in adopting an "informal/pragmatic" approach?
- Is there full transparency in respect of this process?
- How are illnesses verified? The NIPB might wish to seek clarification.
- What does the 'pragmatic approach' deliver (compared to interviews under caution)?
- In view of these concerns, should RMP investigations be brought to the attention of the European Court for consideration?
- The DPP/PPS decision not to prosecute also raises concerns which require further scrutiny.

## 2. Interviews Under Caution

In RMP cases where soldiers are interviewed under caution the investigation processes and procedures also raise a number of concerns.

**Pre-interview disclosure:**

The HET states in RMP case reports that, *"there is a legal obligation placed upon the HET to serve on those representing an interviewee a pre-interview disclosure package. This consists of all existing evidential documentation and other material that is relevant to the case."* [122]

In response to a Freedom of Information request about pre-interview disclosure the HET made the following points; *"Where the HET decides to interview after caution (as a potential suspect) the lawyers who represent them make it clear that they require pre-interview disclosure of all relevant material held by the HET so that they can properly advise their clients, especially as the events in question happened, in some cases, over 40 years ago."*[123]

[121] It is believed that these interviews are not recorded; but it is not clear.
[122] HET Review Summary Report, on file with author. Details of the case are not revealed for reasons of confidentiality.
[123] FOI Request number F-2011-03623, received November 21, 2011, on file author.

The FOI response goes on to say; *"Under the Criminal procedures and Investigations Act 1996, the HET is* ***under no obligation to reveal the prosecution case to the suspect or their legal representative before questioning begins.*** *However, the Court of Appeal has held that if the police do not provide* ***sufficient information*** *to enable a solicitor properly to advise his client, the solicitor is entitled to advise his client to refuse to answer questions under caution."* [124] *[Emphasis added]*

It would appear that the HET has taken, in some cases, a very wide interpretation of 'sufficient information'.

Importantly, there is evidence to indicate that the 'package' includes contemporary or new witness statements made by individuals who witnessed the death/incident but did not make a statement to the police at the time. It is my understanding that the witnesses, the families, NGOs and/or lawyers who enabled the new witnesses to come forward, were not informed by the HET that new statements would form part of a 'pre-interview disclosure package' to solicitors representing soldiers. In a recent meeting with Dave Cox (HET Director), senior staff and the author, it was confirmed that new witness statements are included in the 'pre-interview disclosure package'.[125]

It is of considerable concern that there appears to be inequality in treatment where State agencies (in this case the military) are involved, compared to non-state or paramilitary suspects. There are examples in paramilitary related historic cases where suspects have received significantly less fulsome pre-interview disclosure.[126] There is no clear rationale for this less favourable differentiation in treatment.

**Pre-Prepared Statement**

When soldiers are interviewed under caution it is in the presence of their solicitor, recorded, and generally in his/her offices. The soldiers are voluntary attendees. Under these circumstances the HET state that "they are treated as per the guidelines of the Police and Criminal Evidence (NI) Order." [127]

An analysis of HET reports reveals that at the start of interviews soldiers present the HET with a pre-prepared written statement. These tend to be carefully crafted detailed statements which have benefited from the wide pre-interview disclosure package and several months preparation. Pre-interview disclosure is likely to have an effect of memory recall and/or jogging memory. It appears that the value of soldiers' statements in terms of the level of additional information revealed (or answering unresolved questions) is limited. Statements tend to be a repetition of the original argument advanced in the RMP interview, but with any gaps carefully plugged, and some additional self-serving personal details about the individual. The process offers the soldier an opportunity to bolster his original statement and defence.

[124] FOI Request number F-2011-03623, received November 21, 2011, on file author.
[125] 8 February 2012, held in CAJ Office, also in attendance were Patricia Lundy and Gemma McKeown (CAJ), minutes of the meeting are on file with the author.
[126] This is based on interviews with a number of solicitors representing paramilitary suspects in recently examined historic cases; details of these cases are confidential. A more in depth investigation and scrutiny of comparative cases is recommended.
[127] FOI Request number F-2011-03623, received November 21, 2011, on file author.

The pre-prepared statements appear to depart from standard practice and procedures in a number of ways. The statement has the advantage of weeks or months in preparation, in advance of a HET formal interview.

**Interviews/ Robustness/ Editing**

An analysis of a sample of case reports indicates that some HET interviews appear to lack robustness and inconsistencies are frequently not adequately challenged. By way of illustration, the following comments are taken from HET reports: *"Soldier A accepted that he shot 'John' in the back, but was adamant that he was turning towards him when he fired. He said the fact that the exit wound had come out the front of his body at angle supported what he was saying." [John is not the victim's real name]*

This statement does not appear to have been challenged and/or followed up by the HET; if it was, it is not apparent in the report. Another HET report states: *"There are several differences in what Soldier D said to the RMP during the 'statement taking exercise' and what he told the HET in a formal interview under caution nearly 40 years later. A detailed critical comparison of a version of events recorded for one purpose against one given so long afterwards for an entirely different reason would, in the view of the HET, be invalid."*

It is not clear why the HET did not feel it valid to challenge the inconsistencies in statements; and why the purpose is described as "entirely different". Importantly, the actual questions put to suspects and answers during HET interviews are not revealed. The content of interviews is edited by the HET and appears to be summarised; this will be addressed further below. In some instances the extent of the interview amounts to one page and a half in HET reports. The processes and procedures are not transparent.

**Drafts, Changes to HET Reports**

It is not clear how the HET went about making changes to reports and in some cases changed the wording of accounts given by soldiers, about their direct involvement in and recollection of fatal shootings. Many of the interviews were not under caution and were not recorded. The wording in reports is a summary based on a senior investigating officer's notes and recollection (or interpretation) of what was said during interviews. It is not clear whether HET went back to soldiers to get their permission to change their words.

**Policies and Procedures**

In response to a Freedom of Information Request,[128] the HET confirmed that it does not have a written policy or a procedural document for identifying, tracing and interviewing soldiers involved in fatal shootings.[129]

[128] FOI Request number F-2011-03623, received November 21, 2011, on file author.

[129] It is surprising that the HET no longer have written policies on such important procedures. In August 2007 senior HET management drafted a number of 'position papers' on HET policy with regards to 'Identification, Tracing and Interviewing of Military Personnel', copies on file with the author.

Decisions to interview under caution or not (for example) are made on a case by case basis. The senior HET officer heading up the RMP Cases Team appears to have sole responsibility for such decision making.

There is no current Memorandum of Understanding between HET and MOD on matters pertaining to identification, tracing and conduct of interviews with military personnel. This raises concerns about standards and procedures, decision making and transparency.

**Questions to be considered**

Interviews under caution raise a number of concerns as indicated above; in particular that the investigation process and procedures appear to depart from accepted standards.

- Does this amount to abuse of process?
- Does it impair the prospect of future prosecutions should a family wish to pursue this option?
- What power does the HET have to depart from accepted procedures and best practice guidance?
- What is the rationale for treating suspects differently by subjecting some to a more robust process which is compliant with the law and departing from these standards in other cases?
- Are families aware of the risks (if any) in prejudicing future prospects for prosecution.
- Is there full transparency in respect of this process?
- Why are there no written policy documents on procedures for identifying, tracing and interviewing military personnel?

**3. Accountability**

To comply with Article 2, investigations must be effective in order to secure accountability. The research raises questions about the HET process, the effectiveness of investigations and ability to hold the military to account. There are individual expressions of regret and/or apologies from individual soldiers in HET reports.[130] And, crucially, victims are frequently vindicated. The symbolism of apologies is important for many families; it provides a measure of acknowledgement. However individual expressions of regret or apology should not diminish the obligation to carry out impartial, effective and transparent investigations.

**Conclusion:**

There are many more issues raised by the research that require discussion but are outside the scope of this paper. The points above are the most salient for the purposes of this briefing. Of particular note are apparent anomalies and inconsistencies in the investigation process where the military is involved, compared to historic cases where non-state or paramilitary suspects are involved. The focus of the paper is the

[130]These apologies raise a number of issues that cannot be adequately addressed in this briefing paper.

independent team set up by the HET to examine all RMP cases. The team is made up of retired police officers from outside Northern Ireland. This raises questions about the ability, and/or perception, of the HET to undertake impartial, effective investigations in cases involving State agencies and the extent to which the families participating in the process are aware of departures from accepted procedures. Importantly, this raises concerns about the extent to which the HET's processes and procedures are compliant with Article 2. The perception of independence as well as its reality is critical as it impacts directly on the confidence of those who engage with the HET process. The author recommends that a more in depth investigation, with full access to HET policies, procedures and comparative reports, should be undertaken by the Criminal Justice Inspector for Northern Ireland.

**Since this paper was written a report from HM Inspector of Constabulary has vindicated the above concerns and HET investigations have been halted.**[131]

[131] HMIC 'Inspection of the Police Service of Northern Ireland Historical Enquiries Team' 2013.

# Appendix 1: CAJ Mapping the Rollback Matrix Paper

This paper aims to 'map' the status of commitments relating to human rights (including equality) made as part of the 1998 Agreement and those which followed it to implement the settlement. These are namely the:

- 1998 Belfast/Good Friday Agreement (Multi-Party Agreement and UK-Ireland treaty, hereafter the B/GFA);
- Weston Park Agreement (UK-Ireland) 2001
- Joint Declaration (UK-Ireland) 2003
- St Andrews Agreement (UK-Ireland) 2006
- Hillsborough Castle Agreement 2010 (DUP and Sinn Féin);

Whilst there were provisions for review of institutions within the B/GFA there was no dispute resolution mechanism.

The mapping is under the following four thematic areas and subheadings:

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| **Protection of Rights** | ECHR, treaties and international obligations |
| | Human Rights Commissions |
| | Bill of Rights |
| | Political safeguards |
| | Language Rights |
| **Equality** | Equality watchdog and scrutiny mechanisms |
| | Statutory Equality Duty |
| | Right of women to equal political participation |
| | Enhanced equality legislation |
| | Socioeconomic rights (various), young people. |
| **Policing, Security and Justice Reform** | Policing reform |
| | Emergency legislation, demilitarisation and paramilitarism |
| | Criminal Justice Reforms |
| | Devolution of Justice |
| | Parades |
| **Dealing with the past** | Victims services |
| | Criminal and transitional justice mechanisms |
| | Equality of treatment for the two main communities |
| | Integration and reconciliation policy |
| | Prisoner reintegration |

| Protection of Rights: | | |
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| **Title** | **Commitment** | **Status** |
| **European Convention on Human Rights (ECHR) and other international treaty obligations** | - **ECHR in NI**: The B/GFA commits to the '**incorporation into Northern Ireland law' of the ECHR** with direct access to the courts, remedies for breach of the ECHR and Court power to overrule incompatible Assembly legislation; it also commits to safeguards to ensure the NI Assembly nor public bodies can infringe the ECHR, and arrangements to ensure that 'key decisions and legislation' are proofed to ensure they do not infringe the ECHR. | There are provisions in the Human Rights Act 1998 and Northern Ireland Act 1998 taking forward these commitments. The Human Rights Act is still under threat from the Conservative party, who have argued for its repeal, which for NI would be incompatible with the B/GFA; In relation to the arrangements to ensure ECHR compatibility NI Ministers do have to state on the face of a Bill that they regard it as ECHR compatible and the Attorney General has referred at least one Bill (relating to Asbestos compensation) to the UK Supreme Court; less clear are arrangements to ECHR proof 'key decisions'. |
| | - **Other treaties**: The B/GFA also provided for the UK to 'actively consider' ratifying the **European Charter for Regional and Minority Languages (ECRML)** in the context of measures for the Irish language and for Ireland to ratify the **Framework Convention for National Minorities (FCNM).** | The UK ratified the ECRML in 2001 (further discussion below under language rights); Ireland ratified the FCNM in 1999 (which could afford protections to a Protestant /British minority in any future united Ireland.) There have however been significant reporting and substantive compliance issues, in particular in relation to duties relating to the Irish language under the ECRML. On two occasions the UK has submitted ECRML reports to the Council of Europe without information relating to devolved matters in Northern Ireland, the UK remains in default on a number of its commitments and other recommendations have not been acted upon. |
| | - **Equivalence in Republic of Ireland:** The B/GFA commits Ireland to "bring forward measures to strengthen and underpin the constitutional protection of human rights" including further examining the "question of the incorporation of the **ECHR**" as well as drawing on other international legal instruments. The B/GFA commits that "The measures brought forward would ensure **at least** an equivalent level of protection of human rights as will pertain in Northern Ireland." | Five years passed before the passage of the European Convention on Human Rights Act 2003 through the Oireachtas and the legislation is weaker than the UK Human Rights Act. Ireland also ratified the FCNM as part of the B/GFA. The commitment to a minimum bench mark of equivalence in the legislative framework of rights is significant. The two human rights commissions have mapped the present status of equivalencies in their advice on a Charter of Rights (see below). There is little indication that in the likes of legislative drafting processes efforts are made to ensure rights protections are at least in line with the level of protection in NI. |

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| | **International Obligations and NI**: The B/GFA provided that Westminster ("whose power to make legislation for Northern Ireland would remain unaffected") "will... legislate as necessary to ensure the United Kingdom's international obligations are met in respect of Northern Ireland." | s26-27 of NI Act 1998 provides a power for the Secretary of State (SoS) to direct action (including legislation) should or should not be taken by a NI Minister in order to fulfil international obligations (defined as 'any international obligation of UK' (other than EU law or ECHR rights, which are provided for separately in the Act ); In contrast to wording of B/GFA power is permissive – the SoS 'may' intervene, and only when he/she 'considers' an act incompatible/ needed for international obligations. SoS has not been willing to intervene on key obligations made even as part of St Andrews Agreement (e.g. Irish Language Act), but did intervene in 2007 to legislate for an EU Gender, Goods and Services Directive the then First Minister (Ian Paisley MLA) had refused to sign on reported grounds of its reference to transgendered persons. |
| **Human Rights Commissions** | **Creation of NIHRC:** The B/GFA guaranteed the creation of a new Northern Ireland Human Rights Commission (NIHRC) under Westminster legislation, with enhanced functions to its predecessor Standing Advisory Committee on Human Rights. | The NIHRC was set up under the Northern Ireland Act 1998 and operational in March 2009; It is currently accredited recognised under the UN system as an 'A status' National Human Rights Institution. |
| | **Reviews of NIHRC Powers:** In the **2003 Joint Declaration** the UK government committed to bringing forward a response to the NIHRC review of powers, and ''consistent with the Agreement and with the UN principles relating to national institutions for human rights (Paris Principles), the UK committed to further resourcing for the NIHRC and that its appointments would be made in line with the Paris Principles; In the 2006 St Andrews Agreement committed the UK government to bring forward legislation to include powers to compel evidence, access places of detention, and rely on the Human Rights Act when bringing proceedings in its own name. | The strengthening of the **NIHRCs powers** committed to under the 2003 Joint Declaration did not take place until after St Andrews and the Justice and Security Act 2007 and the NIHRC investigations powers were subject to significant **'national security'** exemptions; the NIHRC was also given powers to enter places of detention but not designated as part of the UKs National Preventative Mechanism under the Optional Protocol of the UN Convention Against Torture; The NIO make appointments to the NIHRC and there is no explicit provision to ensure that those with ties to government appointed to the NIHRC act only in an advisory capacity, despite the terms of the Paris Principles; In recent years the NIHRC has faced **cuts to its budget** of 25%; in 2013 the NIO has proposed **transferring the NIHRC to the devolved institutions**, and introduced legislation to Westminster. This could lead to its merger with other bodies and also carries the risk the NIHRC could lose competencies to scrutinise non devolved power and might, depending on the decisions made, lose its 'A' category status. |

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| | **The B/GFA committed the Irish Government to** establishing a **Human Rights Commission** with a mandate and remit equivalent to that within Northern Ireland. | The **Irish Human Rights Commission** was not established until 2001, amid controversy when the Government initially failed to appoint a number of candidates recommended by its own selection committee. After policy clashes with Government it subsequently faced severe budget and cuts with staff numbers reduced from 22 down to six, and in 2008 an (ultimately defeated) plan to merge the IHRC with other bodies. A new merger plan with the Equality Authority was introduced in 2011. Both bodies were left in limbo for over a year once the terms of office of their boards had expired and were not replaced. The new Irish Human Rights and Equality Commission (IHREC) is now being established amid further controversy over the Department deeming a candidate recommended by the selection panel ineligible and subsequently setting a criteria for Chief Commissioner, that candidates must not have been a member of an equality or human rights commission. There are consequently significant differences in the mandates and remits of the IHREC and NIHRC. |
| | **The B/GFA "**envisaged that there would be a joint committee of representatives of the two Human Rights Commissions, North and South, **as a forum for consideration of human rights issues in the island of Ireland."** | The Committee was established and initially held monthly meetings and sub-committees on racism, emergency legislation and on the proposed Charter of Rights, yet underfunding and pressure from domestic agendas meant little capacity for the Committee to develop other work. Tailored funding from the two governments was briefly provided in 2008 but not renewed. Meetings became less frequent and were eventually discontinued when the term of office of IHRC Commissioners expired. |
| **Bill of Rights** | The **B/GFA:** delegated advising on rights, supplementary to the ECHR, to be included in a NI Bill of Rights, to the new NIHRC. Such rights were to draw on international standards and reflect the 'particular circumstances of Northern Ireland'. They were to reflect the 'principles of mutual respect for the identity and ethos of both communities and parity of esteem' and include consideration of a statutory duty on public authorities for equality of treatment for the identity and ethos of the two main communities, and anti-discrimination and equality of opportunity provisions. | Despite the commitment in the B/GFA, along with the clear reiteration that the UK government would legislate at Westminster for the Bill of Rights in the 2003 Joint Declaration, no such legislation has been introduced. |

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| | Further provisions in the Joint Declaration and St Andrews:<br>The 2003 Joint Declaration stated: "..the British Government is committed to bringing forward legislation at Westminster where required to give effect to rights supplementary to the ECHR to reflect the particular circumstances of Northern Ireland."<br><br>St Andrews committed the UK government to establishing " a **forum on a Bill of Rights** and convene its inaugural meeting in December 2006." | The Bill of Rights Forum was established and handed its advice to the NIHRC in 2008 who later that year (10 December) discharged its remit under the B/GFA and submitted its final advice to the UK Government; The NIO subsequently issued a consultation paper indicating the NIO would take minimalist approach dismissing many rights put forward by the NIHRC as more relevant to a (ultimately non-existent) UK Bill of Rights (see below); The UK government has not taken forward any legislative proposals subsequent to the consultation and more recently appears to have articulated an additional prerequisite outside the terms of the B/GFA of 'consensus' from both unionist and nationalist parties on any rights included in a Bill. |
| | **British/UK Bill of Rights:** There is no provision for a British or UK Bill of Rights within any of the peace agreements. This initiative has a different genesis in UK debates around national identity, citizenship and the Human Rights Act. In 2007 the Labour Government issued the 'Governance of Britain Green Paper CM 7170 which discussed a 'British Bill of Rights and Duties' which was not taken forward. The 2010 Coalition Government set up, in March 2011, a UK Bill of Rights Commission to examine the potential for a UK Bill of Rights. | The final report "A UK Bill of Rights? The Choice Before Us" from the Uk Bill of Rights Commission to the UK government was published on the 18 December 2012. The report recognizes the "*distinctive Northern Ireland Bill of Rights process and its importance to the peace process in Northern Ireland*", noting that the Commission does not wish to *"interfere in that process in any way nor for any of the conclusions to be interpreted or used in such a way as to interfere in, or delay, the Northern Ireland Bill of Rights Process."* |
| | The B/GFA (paragraph 10 rights/safeguards etc) stated that one of the matters the joint committee of the two human rights Commissions' will consider was **the possibility of establishing a charter**, open to signature by all democratic political parties, reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the island of Ireland." | The two Commissions did not establish a Charter of Rights themselves but issued advice on 11 July 2011 to the two governments concluding a Charter of Rights was justifiable. To date there has been no movement from government in relation to establishing a Charter. |
| **Political Safeguards** | **Elections**: The B/GFA set out that there would be an 108 member democratically Assembly would be elected by Proportional Representation (Single Transferable Vote-STV). | The NI Assembly is elected by STV; on a number of occasions the UK government has suspended the Assembly or an election to it, there is no provision for this in the B/GFA; under the 2003 Joint Declaration lifting suspension was linked to decommissioning. |

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| | **Power sharing:** B/GFA provided for the allocation of ministers / committee chairs / committee membership proportionately; a party can decline to nominate ministers; MLAs are to designate as unionist/nationalist/other; following St Andrews the election of First Minister is undertaken by the largest party of the largest designation; and deputy First Minister largest party of second largest designation; the Justice Minister has been appointed to date outside this system. | Parties cannot be excluded from the Executive if their electoral strength entitles them to ministries; but parties can decline Ministries and hence participation in government; the issue of an official 'opposition' is currently under review by an Assembly committee, and the NIO is currently legislating in relation to the allocation of the justice ministry. |
| | **Civic Forum:** the Assembly is unicameral, but the B/GFA did provide for a civic forum comprising of members of the 'business, trade union, voluntary' and other sectors to "act as a consultative mechanism on social, economic and cultural issues."<br><br>**Cross Border and Cross Channel Institutions:** the B/GFA provided for a North-South Ministerial Council, British Irish Council and cross-border implementation bodies, including in areas relevant to human rights. St Andrews included amendments to the Pledge of Office to require ministers to participate in the North South Ministerial Council and British Irish Council. | Set up in 2000 suspended along with Assembly and not reconvened.<br><br>The institutions and cross border bodies were established including those dealing with Irish/Ulster Scots language rights and the administration of EU peace funding. The Ministerial pledge of office requires participation in the cross border and cross channel Councils. |
| | **Vetoes:** the B/GFA provides for a 'petition of concern' to be raised by a significant minority (30) of MLAs meaning for a vote to carry it then requires both support of unionists and nationalists; St Andrews added further provisions allowing 30 MLAs to refer ministerial decisions to the full executive, and require cross community support for executive decisions not achieved by consensus. | Beyond 30 MLAs signing there is no criteria for 'petitions of concern' which have been used for matters which are nothing to do with minority protection (e.g. double jobbing, a carbon dioxide advertising campaign) or even against minority rights provisions (e.g. amending local government powers to remove a barrier to Traveller sites, motion on gay marriage equality); In addition the system of designation on political (unionist, nationalist, other) rather than other ethnic indicators (e.g. religion or citizenship) means the votes of 'others' carry no weight. |

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| | **Ministerial Pledge of Office/Code:** The B/GFA set out that the Ministerial Pledge of Office would include a provision "to serve all the people of Northern Ireland equally, and to act in accordance with the general obligations on government to promote equality and prevent discrimination;" and that the Ministerial Code would state Ministers at all times must "operate in a way conducive to promoting good community relations and equality of treatment;" The St Andrews Agreement provided for the ministerial code to be set up on a statutory basis. | Pledge of Office was legislated for under the Northern Ireland Act 1998 and includes the equality provision. The Northern Ireland (St Andrews Agreement) Act 2006 set up the ministerial Code on a Statutory Basis, the current code includes the provision for equality of treatment. The effective enforcement of such provisions is however open to greater debate. |
| **Language rights** | The B/GFA provided for "respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland, the Irish language, Ulster-Scots and the languages of the various ethnic communities [sic]".<br><br>The B/GFA committed the UK, in the context of consideration of signing the Council of Europe ECRML to eight concrete commitments in relation to the Irish language, including education, broadcasting, non-discrimination and promotion initiatives. | The UK ratified the ECRML registering a range of specific commitments under Part III of the Charter for Irish many of which relate to the B/GFA commitments; the UK went further by including Scots (and Ulster Scots) under the general part II provisions of the Charter.<br><br>Save legislating for a duty to promote Irish medium legislation and the establishment of cross border implementation bodies, the commitments remain soft law, and hence can be difficult to enforce; discriminatory legislation remains on the statue books, and provision for broadcasting is not on a statutory footing. |
| | The 2003 Joint declaration committed the British government to continue to **discharge its commitments to the Irish language**, including in broadcasting, as well as 'encouraging support' for an Ulster-Scots academy.<br><br>Under St Andrews commitments were made that: "The [UK ] **Government will introduce an Irish Language Act** reflecting on the experience of Wales and Ireland" there were also commitments for the NI Executive to take forward strategies to "enhance and protect the development of the Irish language" and enhance and develop the Ulster Scots language, heritage and culture. | The UK government, despite repeated calls from international treaty bodies and others, has not discharged its commitment to introduce an Irish language act and instead has preferred to delegate the Act to the Assembly in full knowledge it will be vetoed.<br><br>The St Andrews Agreement legislation did place a statutory obligation to introduce a strategy for Irish and a strategy for Ulster Scots. However, in ultimately aborted moves heavily criticised by the Council of Europe and Human Rights Commission the DCAL Minister announced an intention to instead introduce an 'integrated strategy' with the aim creating 'parity' between Irish and Ulster Scots. The strategies were therefore not introduced in the 2007-11 Assembly but new strategies were consulted on by DCAL in 2012. The Ulster Scots Academy project has been reworked on a number of occasions. The formal introduction of the commitments is pending. |

| Equality | | |
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| **Title** | **Commitment** | **Status** |
| **Equality Watchdog and Scrutiny mechanisms** | **Equality Commission**: among safeguards listed in the B/GFA was: *"...an Equality Commission to monitor a statutory obligation to promote equality of opportunity in specified areas and parity of esteem between the two main communities, and to investigate individual complaints against public bodies."*<br><br>The B/GFA did caveat the creation of a sole Equality Commission, from the amalgamation of four predecessor bodies dealing with Fair Employment, gender, racial equality and disability, as subject to public consultation. The new Commission was also to take on the remits of these bodies. | The B/GFA implementation legislation did establish a sole amalgamated Equality Commission in 1999, following considerable debate regarding the virtues of amalgamating its predecessor bodies.<br><br>In addition to powers under anti-discrimination legislation the Equality Commission was given a power to oversee the statutory equality duty (s75(1) Northern Ireland Act 1998). The Commission was also given powers to oversee the second limb of the duty under s75(2). This was legislated for as a 'good relations' duty (and not as a 'parity of esteem' duty as has been proposed under strand 1 of the B/GFA.) In 2013 it is now proposed to transform the institution into an 'Equality and Good Relations Commission' granting the body further community relations powers, and potentially marginalising its equality function. |
| | **Assembly Safeguards**: The B/GFA also provided for a special Assembly Committee "to examine and report on whether a measure or proposal for legislation is in conformity with equality requirements, including the ECHR/Bill of Rights." It also states it is open to Assembly to consider whether to bring together its responsibilities in a dedicated Department of Equality. | To date the special Assembly equality scrutiny committee, which is provided for in legislation, has only been convened once, in late 2012, to scrutinise the equality implications of the Welfare Reform Bill. The Committee split, a majority finding there were no specific breaches of equality requirements (despite being presented evidence to the contrary), but Nationalists and the Green Party voted down the report in the Assembly with a petition of concern.<br>Rather than a dedicated Department of Equality the Assembly decided to vest this role in OFMdFM and this departments' Junior Ministers. There is to date no fixed strategic policy arrangement to ensure the discharge of this coordination function beyond the Department's equality scheme. |
| **Statutory Equality Duty** | The B/GFA, subject to consultation, provided for the introduction of a **statutory equality duty** on "on public authorities in Northern Ireland to carry out all their functions with due regard to the need to promote equality of opportunity in relation to religion and political opinion; gender; race; disability; age; marital status; dependants; and sexual orientation." The B/GFA stated that public bodies would have to draw up enforceable schemes with policy appraisal and equality impact and monitoring arrangements. | The B/GFA implementation legislation did lead to the introduction of the **statutory equality duty under Section 75** (s75) of the Northern Ireland Act 1998. Despite some good work there are concerns that the duty has never been fully implemented and that it risks further regression. Issues include instances of: non-application to macro government policies; timing application of the duty when it cannot influence policy; application only in procedural rather than a substantive manner (e.g. proper analysis of underlying data); misunderstandings that the equality of opportunity can be met by 'universal application' (e.g. 'positive' policies will have a good and hence neutral impact on equality groups) and a lack of effective enforcement of the duty. |
| | The 2003 Joint Declaration committed the UK government to a **non-retrogressive review** of the "operation **of the section 75 equality duty** including effective monitoring and enforcement mechanisms without diminishing its current effectiveness in legislation or in the Equality Commission's guidelines)". The UK government was also to encourage the devolved institutions to keep the Commissions powers under review. | An operational review took place in 2004 with an independent element. Following this the Equality Commission commenced a strategic review of the effectiveness of Section 75 in April 2006 and reported in 2007, which itself was informed by the outcomes of the 2004 operational review. Concerns that the counterpart 'good relations' duty would be used to undermine equality had initially led to Parliament subordinating good relations to equality on the face of the legislation. The Equality Commission, post the Strategic Review, advised that the equality impact assessment methodology be equally applied to 'good relations'. This is not explicitly provided for in the B/GFA or Northern Ireland Act 1998. CAJ research in 2013 found evidence that the interpretation and application of 'good relations' in Equality Impact Assessments was undermining equality initiatives and the purpose of the equality duty. At present there are plans to change the Equality Commission into an 'Equality and Good Relations Commission' and to formally incorporate 'good relations' criterion into equality impact assessments. |

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| **Right of women equal political participation** | Among a number of rights which are affirmed in the B/GFA is **"the right of women to full and equal political participation."** In the Joint Declaration the two governments reaffirmed commitments to this right and others affirmed in the Agreement and stated they envisaged 'many of' them being given legislative effect though the Bill of Rights and Single Equality Bill. Other rights affirmed included the right to equal opportunity in all social and economic activity, on grounds including gender. | Whilst the right is affirmed in the B/GFA there is no apparent mechanism to make it a reality. Implementation of **UN Security Council Resolution 1325** on women, peace and security, which passed shortly after the B/GFA would be one obvious mechanism with which to progress the commitment to full and equal political participation. However the UK, despite supporting the Resolution 1325, has declined to apply it to Northern Ireland. There is also the framework provided by the UN Convention for the Elimination of all forms of Discrimination against Women (CEDAW). As dealt with elsewhere there is also no Bill of Rights or Single Equality Bill. |
| **Enhanced equality legislation** | **Anti-Discrimination Legislation:** The B/GFA committed the British Government to rapid progress with measures on employment equality included in the *Partnership for Equality* White Paper and "the extension and strengthening of anti-discrimination legislation." St Andrews stated "Government believes in a **Single Equality Bill** and will work rapidly to make the necessary preparations so that legislation can be taken forward by an incoming Executive... " | Fair Employment and Treatment (Northern Ireland) Order 1998 strengthened fair employment legislation. Despite significant preparatory work, and calls from international treaty bodies for it to do so the NI Executive is yet to introduce single equality legislation. The main reason for this blockage appears to be opposition to provisions relating to the equality grounds of sexual orientation. Despite single equality legislation in Great Britain in 2010 there remains dozens of separate pieces of legislation in NI with differing duties. |
| | B/GFA committed to "a review of the **national security** aspects of the present fair employment legislation at the earliest possible time"; The Joint Declaration similarly committed to "review the operation of the national security exemption in the Fair Employment and Treatment Order with a view to considering whether it is still a requirement."<br><br>St Andrews committed to legislation in 2006 to reform "entry requirements to ensure access for EU nationals to posts in the **Civil Service" (nationality requirements**). | **National security** exemptions to anti-discrimination legislation still exist.(e.g. under fair employment the SoS can issue a 'national security' certificate blocking discrimination claims on grounds of national security, public safety or public order; the only right of appeal is to a 'special tribunal' which can operate in secret (on the basis of a closed material procedure).<br><br>High level **'public service' posts** are **still reserved for British citizens** and not open to Irish/other EU citizens. Other civil service posts are open to most European and Commonwealth nationals. Public service posts deal with 'national security', border control/immigration or other posts dealing with information that if released might be "prejudicial to the interests' of the United Kingdom". |
| | The B/GFA committed **Ireland** to "implement enhanced **employment equality legislation**" and "introduce **equal status legislation**" | Ireland passed the Employment Equality Act 1998 and Equal Status Act 2000. |

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| **Socioeconomic rights, anti-poverty, objective need and tackling the unemployment differential** | **Strategic Anti-Poverty Strategy**: B/GFA committed the British Government to rapid progress on "a new more focused Targeting Social Need initiative". In the Joint Declaration the governments recognised "**many disadvantaged areas, including areas which are predominantly loyalist or nationalist, which have suffered the worst impact of the violence and alienation of the past, have not experienced a proportionate peace dividend. They recognise that unless the economic and social profile of these communities is positively transformed, the reality of a fully peaceful and healthy society will not be complete."** The British Government then committed to "work with the devolved administration, when restored, to bring forward **a strategic and integrated approach aimed at the progressive regeneration of those areas of greatest disadvantage**."<br><br>At St Andrews the British government committed to "**an Anti-Poverty and Social Exclusion strategy to tackle deprivation in both rural and urban communities based on objective need and to remedy patterns of deprivation**. The strategy will build on the good work of the 'Neighbourhood Renewal' and 'Renewing Communities' initiatives. This can be taken forward by an incoming Executive." St Andrews also made reference to a financial package for the executive. | In 2006 CAJs 'Rhetoric and Reality' report found "The poorest members of our society, both Catholics and Protestants, are relatively worse off than they were ten years ago." The recent 2013 Community Relations Council Peace Monitoring Report found evidence of "wide disparities between rich and poor" and that community differentials continued to persist. A recent report "Equality Can't Wait' by the Participation, Practice and Rights Project (PPR) also highlights a lack of action to remedy housing inequalities and significant disparities in official investment programmes being targeted in more affluent areas rather than areas of disadvantage. The report also highlighted significant gaps in the Equality Commissions 42 page 'Statement of Key Inequalities' which makes no reference to religious inequality in housing, focusing instead on 'segregation'.<br><br>The **Northern Ireland (St Andrews Agreement) Act 2006** placed a statutory duty on the NI Executive to "**adopt a strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on objective need**." At present however the Executive has not adopted such a strategy. The direct rule government in November 2006 did issue an anti poverty and social exclusion strategy ('Lifetime Opportunities'). It made reference to 284,000 people living in urban areas of concentrated multiple deprivation, as well as pressures on rural communities. It affirmed "inequality still remains too high" the EQIA identifying greater risks of poverty for Catholics, nationalists, ethnic minorities, younger persons, divorced/ single/ separated persons, women, persons with a disability and persons with dependents. The delivery mechanism was to link the strategy to departmental spending plans. There is passing reference to a strategy in the present 2011–2015 Programme for Government (PfG) as a building block yet no strategy has been formally adopted by the Executive. There are initiatives Social Investments Fund and the Delivering Social Change framework, yet these initiatives are not anti-poverty strategies, are at an early stage and there is currently little information on their practical implementation or impact.<br><br>Under the Child Poverty Act 2010 the NI Executive issued a Child Poverty Strategy, 'Improving Children's Life Chances', in March 2011. |

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| | **Unemployment Differential:** B/GFA committed the British Government to rapid progress on a range of measures aimed at combating unemployment and progressively eliminating the differential in unemployment rates between the two communities by targeting objective need." The British Government in the 2003 Joint Declaration reaffirmed this commitment and added it would "encourage funding to be made available for research." | The **CAJ 2006 Rhetoric and Reality Report** indentified ongoing differentials and found that "The Government has disregarded major differences in labour market trends between the two communities; failed to target investment at those most in need; and has pursued measures such as a Shared Future and the Taskforce on Protestant Working Class Communities that at best ignore, and at worst exacerbate, community differentials and encourage the sectarianising of the debate." Since then the issue of the existence of an employment differential and measures to tackle it have continued to be at best marginal in official discourse. |
| | **Rights Affirmed:** Among the rights affirmed in the B/GFA were "the right to equal opportunity in all social and economic activity regardless of **class**, creed, disability, gender or ethnicity" and the "right to choose ones residence." In the Joint Declaration the government states that it was envisaged 'many of' these rights affirmed in the B/GFA would be given legislative effect through the Bill of Rights and Single Equality Bill and legislation to tackle racism and sectarianism. | There is no **Bill of Rights or Single Equality Bill**. In 2004 there was hate crimes legislation providing for aggravated sentencing for crimes with racist/sectarian motivation (later extended to homophobic and disability motivation too), but nothing new to address specifically social and economic activity.<br><br>In relation to housing rights in January 2013, to little outcry, the DSD Minister, rather than reform the institution to further remedy inequalities, announced plans to **disband the Northern Ireland Housing Executive**, which had been created 40 years ago to prevent housing discrimination. |
| | **Children and Young People:** In the section on victims the B/GFA also stated: "The participants particularly recognise that young **people from areas affected by the troubles face particular difficulties** and will **support the development of special community-based initiatives based on international best practice**." | Despite the reference and commitment to young people in the Agreements being very limited it is **not clear which mechanism, if any, is presently taking forward this particular commitment**. In 2008 ten years after the B/GFA the **UN Committee on the Rights of the Child raised concerns** in relation to the '**particularly delicate' situation** of children in Northern Ireland due to **the legacy of the conflict.** The Committee also recommended additional resources and improved capacities be employed to meet the needs of children with mental health problems throughout the country, **including children affected by conflict**. |

| Policing, Security and Justice Reform | | |
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| **Title** | **Commitment** | **Status** |
| **Policing Reform** | **B/GFA: "**The participants believe it essential that policing structures and arrangements are such that the police service is **professional, effective and efficient, fair and impartial, free from partisan political control; accountable, both under the law for its actions and to the community it serves**;...These arrangements should be based on principles of protection of human rights and professional integrity and should be unambiguously accepted and actively supported by the entire community."<br><br>At St Andrews however the British Government appendaged a paper (Annex E) setting out "future national security arrangements in Northern Ireland" **transferring primacy for covert 'national security' policing away from the PSNI and to MI5**. It did commit to publishing key policy documents setting out the new arrangements. | As detailed below the B/GFA and the resultant Independent Commission on Policing for Northern Ireland (**the Patten Commission**) brought about extensive reforms designed to enhance the accountability of policing. Policing reform included the reform of the Royal Ulster Constabulary (RUC) into the Police Service of Northern Ireland (PSNI), an independent police complaints mechanism (the Office of the Police Ombudsman for Northern Ireland), the establishment of an independent policing authority (the Northern Ireland Policing Board), and a new code of ethics. Sinn Féin did not recognise the new policing dispensation until after St Andrews.<br><br>Patten recommended accountability principles should apply to covert policing and recommended the downsizing, deinstitutionalisation and integration of RUC Special Branch within the PSNI. However, following St Andrews the British Government, in 2007 transferred primacy for the most controversial and human rights sensitive area of covert policing ('national security' policing) outside of the PSNI and hence post-Patten accountability arrangements, to the Security Service MI5. The main policy commitments in St Andrews to additional accountability mechanisms (publishing high-level Memorandums of Understanding) have not been implemented and those documents which have been obtained under freedom of information by CAJ actually seek to further limit policing accountability. |
| | **Implementing Patten:** The B/GFA provided for an independent Commission to make recommendations for future policing arrangements in Northern Ireland and set out terms of reference for what would become the **1999 Patten Commission report**.<br><br>In the 2001 **Weston Park Agreement** the British government committed to **implementing the Patten Report**, including a revised implementation plan, dealing with matters such as **Special Branch**, and taking forward Patten's recommendation for a major research programme on **alternatives to plastic bullets**. **Commitment was also made to new legislation to "reflect more fully the Patten recommendations."** | The Patten Commission reported in 1999 concerns that there would be significant resistance to the Patten reforms were quickly borne out. The **draft legislation and implementation plan proposed by the British Government in 2000 to give effect to the proposals were so emasculated they bore little relation to the original Patten recommendations**. In response one of the Patten commissioners, Clifford Shearing claimed, "The Patten Report has not been cherry-picked, it has been gutted." Following **international pressure and the Weston Park commitments a new implementation plan and legislation were produced**. Notwithstanding that there has been significant reform there are still **oversight institutions envisaged by Patten which were never implemented** (e.g. a *Commissioner for Covert Law Enforcement in Northern Ireland*); or institutions such as the District Policing Partnership Boards (now Policing and Community Safety Partnerships) were not implemented in the manner originally anticipated. There have also been attempts at **police and political interference in key accountability bodies,** most notably the Police Ombudsman during the tenure of the second Ombudsman; Plastic Bullets, which had led to fatalities particually among young people, were ultimately simply replaced by another plastic bullet (the AEP). |
| | **Composition of policing:** the B/GFA envisaged "a **police service representative in terms of the make-up of the community as a whole** and which in a peaceful environment, should be routinely unarmed" and participants affirmed the PSNI should be representative of the society it polices. | At the time of the B/GFA Catholics made up 7.5% and women 10.5% of the composition of the RUC despite both groups making up around half of the working age population. Along with severance packages for existing RUC officers a temporary special measure to ensure 50:50 recruitment of Catholics alongside Protestants/Others into the PSNI was introduced. The measure was successful in increasing the number of Catholics. The measure was then discontinued in 2011 as numbers got near 30% of police officers (and a lower figure |

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| | The 2003 **Joint Declaration** stated that "the PSNI will renew and continue its efforts to encourage applications from **all parts of the community**, including those in which the service has traditionally been under-represented. Efforts should be made to encourage **recruitment from women and ethnic minorities**."<br><br>St Andrews then stated that a **temporary special measure** (50:50recruitment) to recruit more Catholics into the PSNI would **lapse** once the Patten target had been achieved. St Andrews also made clear that there would be no bar on former police officers taking up roles with MI5 once primacy for covert national security policing was transferred to their new Belfast headquarters in 2007. | within PSNI civilian staff). There were no similar measures to recruit more women or ethnic minorities and there have been problems relating to retention of Catholic officers who were recruited.<br><br>In addition to broader questions on retrogression there are the recent revelations of the PSNI 'rehiring scandal' whereby the PSNI has rehired former officers who took such severance packages into senior 'civilian' positions. NIPSA estimates 29% of PSNI 'civilian' staff were agency workers and the practice was subject to an Audit Office investigation. The Patten reforms also envisaged significant structural compositional changes to RUC Special Branch, regarding it as undesirable in reality or perception to have a force within a force, and a significant number of officers took severance packages. However the Audit office report found that of PSNI Departments the Crime Operations Branch, which includes C3 Intelligence Branch (formerly Special Branch), has the second highest number of rehired officers and those persons rehired to work as 'Intelligence Officers' 97% were former retired officers. In addition it is not known how many officers MI5 employs in Northern Ireland (one CAJ estimate is 600, which would be 70% of the numbers of the special branch at the time of the B/GFA) and it is not possible to know the composition given MI5 exemptions from fair employment monitoring and other equality and freedom of information laws and the general secretive nature of its recruitment. |
| **Emergency legislation, demilitarisation, and paramilitarism** | **B/GFA** there were commitments by the British government, caveated to the overall security situation and a 'published overall strategy' to: reduce troop numbers to those of a normal peaceful society; remove security installations "**the removal of emergency powers in Northern Ireland**" and other measures. The Patten Report cited concerns that much of the dissatisfaction with policing, in both loyalist and republican areas, had stemmed from the use of emergency powers and stated "The subject was raised with us on many occasions.... We were surprised to discover that there is no requirement for records to be kept of roadblocks, stops and searches; and that no such records are kept. It was impossible, therefore, to check some of the observations made to us about police and army actions." Patten recommended "**that the law in Northern Ireland should be the same as that in the rest of the United Kingdom" and "that with immediate effect records should be kept of all stops and searches and other such actions taken under emergency powers"** | Troop numbers were reduced and many security installations dismantled. In July 2007 the British Army's 'Operation Banner', which commenced in 1969, was formally ended. It was replaced by 'Operation Helvetic', in which the role of the British Army was to be reduced to a 'residual level' with involvement only in bomb disposal and in extreme public order situations (the retention of the latter situation having been envisaged explicitly by the Patten Commission) although it is now apparent there have been some military operations beyond this, including operations by the Special Reconnaissance Regiment (SRR).<br><br>In relation to emergency legislation in Northern Ireland did face substantive repeal but has largely been replicated in new measures both in UK-wide legislation (e.g. Terrorism Act 2000) or in the Northern Ireland specific Justice and Security Act 2007 (JSA). Many of these emergency powers are permanent, or others such as provisions for non-jury trials, regularly renewed. Emergency stop, question and search powers under the JSA were found to be incompatible with the |

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| | The Irish Government committed to wide-ranging **review "of the Offences Against the State Acts 1939-85** with a view to both **reform and dispensing** with those elements no longer required as circumstances permit."<br><br>The Joint Declaration of 2003 committed the UK to reducing troop numbers to 5000 and "**By April 2005, in a continuing enabling environment, the ...repeal of counter terrorist legislation particular to Northern Ireland**." | ECHR in 2013, unless a Code of Practice which effectively regulated their use was issued. No code had been issued since 2007 but was subsequently brought in on the back of the judgment. However, the record keeping section of the code, unlike all its counterparts in Great Britain, does not contain any mandatory ethnic monitoring requirements. The provisions for non-jury trials have been regularly reviewed following at best 'light touch' processes by the NIO that do not appear to require a compelling evidence base. A commitment from the previous UK government to conduct a full public consultation on the matter was scrapped by the incoming government in 2010.<br><br>In the Republic a review did take place of the Offences Against the State Act, (the Hederman Report). However by a majority view it made recommendations that included the retention of the Special Criminal Court, which were criticised by human rights groups. The Irish government did not implement some of the even minor reforms the Report had proposed and the role of the Special Criminal Court was actually expanded in 2009 to deal with organised crime. |
| | B/GFA stated "All participants accordingly reaffirm their commitment to the **total disarmament of all paramilitary organisations**.... The Independent International Commission on Decommissioning (IICD) will monitor, review and verify progress on decommissioning of illegal arms"<br><br>The 2003 Joint Declaration stated that **paramilitarism** 'from whichever part of the community they come' '**must be brought to an end**' stating an 'immediate, full and permanent cessation of all paramilitary activity' was required.<br><br>The UK and Ireland (Dublin, on 25 November 2003) entered into a further international agreement to establish an '**Independent Monitoring Commission'** to monitor paramilitary activity. | An international agreement established the Independent International Commission on Decommissioning (IICD) to oversee paramilitary decommissioning. Its original two-year target was not met with the IRA ultimately completing decommissioning in 2005, the UVF in 2009 and UDA in 2010 shortly before the IICD was disbanded.<br><br>In addition to ongoing 'dissident' activity there are questions in relation to state action to end ongoing mainstream loyalist activity. For example, the UK-Ireland 'Independent Monitoring Commission' was disbanded in 2011 when it was felt it was no longer needed to monitor IRA activity despite, in its final report stating in "contrast to PIRA, loyalist groups are finding it very difficult to contemplate going out of business." At the time of the 2007 transfer of primacy for 'national security' covert policing to MI5, the Chief Constable stated MI5 would be focusing on 'dissident republicans' and not loyalists, indicating there were separate policing regimes for ongoing paramilitarism from different sides of the community. There has also been significant concern in relation to whether funding patterns and the actions of state agencies have actually strengthened rather than led to the discontinuation of loyalist paramilitary structures. |

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| **Criminal justice reform** | The B/GFA committed to a "**wide-ranging review of criminal justice**" and Weston Park committed the British Government to publishing **a full implementation plan** for the review and draft legislation. The Joint Declaration foresaw the appointment of an independent oversight commissioner, 'a major programme of transformational change [that] will give particular weight to modernisation, accountability, protection of human rights, and a judicial appointments commissioner.<br><br>The **Hillsborough Castle Agreement (DUP-Sinn Féin)** which led to the devolution of justice powers contained a wide range of potential reform actions relating to a: Prison Review, Youth Justice Review 'to ensure compliance with international obligations and best practice', Tribunal Reform; adequate funding for legal services to the disadvantaged; ensuring equality of access to justice for all; Establishment of a sentencing guidelines council; Review of alternatives to custody; provision of diversionary alternatives; review powers of the Prisoner Ombudsman; strategy for the management of offenders; consideration of a women's prison which meets international obligations and best practice; Victims Code of Practice, potentially statutory; a presumption of full and frank disclosure of information by the PPS to a victim; | The '**Review of the Criminal Justice System in Northern Ireland'** was published in March 2000, with a range of recommendations, including those from a human rights perspective. Seeking to get reform implemented has been a slow and drawn out process**. Emergency law was also explicitly excluded from the terms of reference in the review.**<br><br>There was reform of the prosecutorial system with the creation of the Public Prosecution Service and the establishment of a code for prosecutors.<br><br>Some major elements of the system, most notably the Prison Service are only initiating significant reform at the time of writing following the Prison Review which emerged from the Hillsborough Agreement. A raft of other consultations and initiatives are presently taking place further to the Agreement. |
| **Devolution of Justice** | Further to the B/GFA the Joint Declaration in 2003 outlined models and issues for **devolution of justice** powers with the UK of a view to introduce legislation at the earliest opportunity but indicating it would retain responsibility for 'excepted' matters, including National Security. At St Andrews, the two governments envisaged that justice and policing powers would be devolved to the Assembly by May 2008.<br><br>The 2010 Hillsborough Castle Agreement set out a timetable and model for devolution of policing and justice powers as well as a potential reform programme (see above). | The **devolution of justice did not take place until 2010 post the Hillsborough Agreement**. Whilst 'justice' powers were formally devolved there is a **highly complex arrangement whereby 'national security' and other security powers are retained by Westminster with unclear and shifting boundaries**. 'National Security' is not defined and at St Andrews a whole area of mainstream covert policing was designated 'national security' and primacy transfer to MI5; prisons are devolved but when prison officers engage in 'national security' work they cease to be accountable to the Prison Service and become 'Officers of the Secretary of State'; power over the new 'emergency' legislation (JSA 2007) is retained by Westminster etc. For example policing is devolved but the legislation governing emergency type stop and search powers is not. Retention of DNA is devolved, except when it is undertaken for 'national security' purposes. Furthermore the devolution order made clear the raft of 'national security' powers which have been retained by the NIO across the criminal justice system. There are |

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| | | also '**national security' exemptions to the powers of the oversight mechanisms** (Criminal Justice Inspector, Policing Board, Police Ombudsman, Prisoner Ombudsman, Attorney General, Human Rights Commission etc.) |
| **Parades** | The B/GFA did not reference **parades**, although at around the same time following the Independent Review of Parades and Marches (North Report) government legislated under the Public Processions Act 1998 to establish the Parades Commission. At **Weston Park in 2001 a review was promised of the Parades Commission**, under the 2003 **Joint Declaration further commitments were made to consider legislation following the review**.<br><br>The St Andrews Agreement provided for a strategic review of parading "with a view to developing an agreed long term strategy". The Hillsborough Agreement provided for a DUP-Sinn Féin Working Group on Parades tasked with providing "new improved framework" on parades and public assemblies reflecting principles including "Respect for the rights of those who parade, and respect for the rights of those who live in areas through which they seek to parade. This includes the right for everyone to be free from sectarian harassment;" and "Independent decision making". A timetable was set for legislating. | Further to the Weston Park and Joint Declarations the **Quigley Review** of the Parades Commission and the Public Processions Act 1998 took place and the subsequent Public Processions (Amendment) (Northern Ireland) Order 2005, amended parades legislation to impose requirements on supporters of parades and requirements on counter protests to parades.<br><br>Following St Andrews the Strategic Review of Parades ('Ashdown Review') team was established and published an interim report (which set out a new framework for decision making on parades based on the ECHR incorporating the B/GFA provision of 'freedom from sectarian harassment'.) The Strategic Review was stood down without its final report ever being published. The subsequent Hillsborough Working Group on Parades was to build on its proposals. The Working Group Report was never published but draft legislation was consulted on. This did envisage decision making explicitly on 'human rights grounds' and also proposed a new body take over from the Parades Commission, controversially it also proposed extending parades-notification requirements to other public assemblies. Consultation concluded but the DUP withdrew intention to introduce the bill following a vote of Grand Orange Lodge of Ireland to oppose it. The Parades Commission and Public Processions Act 1998 remain. In 2013 further discussions on the matter are to be held by a multi-party group. |

| Dealing with the Past | | |
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| **Title** | **Commitment** | **Status** |
| **Victims Services** | B/GFA stated: "The participants believe that it is essential to **acknowledge and address the suffering of the victims of violence as a necessary element of reconciliation.** They look forward to the results of the work of the Northern Ireland Victims Commission" and envisaged "**The provision of services that are supportive and sensitive to the needs of victims will also be a critical element and that support will need to be channelled through both statutory and community-based voluntary organisations facilitating locally-based self help and support networks.** This will require the allocation of sufficient resources, including statutory funding as necessary, to meet the needs of victims."<br><br>The St Andrews Agreement committed government to introducing legislation to establish a **Victims Commission** for Northern Ireland. | The Commission for Victims and Survivors was not established until May 2008, under the Victims and Survivors (Northern Ireland) Order 2006 (as amended).<br>The appointment by the SoS of an interim commissioner was successfully challenged in the courts and four commissioners were subsequently appointed. A sole Victims Commissioner was then appointed in 2012. OFMdFM in 2009 issued a Strategy for Victims and Survivors and in 2012 a Victims Forum was established along with in April 2012, a **Victims and Survivors Service (VSS).**<br><br>In 2013 the two largest support groups WAVE and Relatives for Justice (RFJ) have raised **concerns about community-based services being sidelined in favour of counselling from the private sector** by VSS who have been administering funding and support. A decision was taken that persons seeking continued support undertake a VSS assessment process, with NGOs questioning why clients of theirs who had been through a VSS assessment had then been redirected elsewhere. There is therefore concern that the strategy may involve removing control of victims issues from NGOs who have been vocal on legacy issues. Given the potential for conflicts of interest there was further controversy over VSS appointing a subsidiary of the Police Rehabilitation Retraining Trust, established to support retired RUC officers, to undertake assessments. |
| **Criminal and Transitional justice mechanisms** | The B/GFA declaration of support stated "The tragedies of the past have left a deep and profoundly regrettable legacy of suffering. We must never forget those who have died or been injured, and their families. But we can best honour them through a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all."<br><br>In the Weston Park Agreement 2001 both governments committed to "**appoint a judge of international standing from outside both jurisdictions to undertake a thorough investigation of allegations of collusion** in the cases, of the murders of Chief Superintendent Harry Breen and Superintendent Bob Buchanan, Pat Finucane, Lord Justice and Lady Gibson, Robert Hamill, Rosemary Nelson and Billy Wright. The investigation of each individual case will begin no later than April 2002 unless this is clearly prejudicial to a forthcoming prosecution at that time....In the event that a Public Inquiry is recommended in any case, the relevant Government will implement that recommendation." | Notably there is little in the Agreements in relation to transitional justice mechanisms, legacy commissions etc. The **Consultative Group on the Past** (Eames-Bradley) was appointed in 2007 by the UK government, and reported in early 2009 but does have its genesis in the Agreements. Equally the various criminal justice mechanisms investigating the past (e.g. PSNI Historical Enquiries Team) do not come from the Agreements. In 2013 it was announced the multi-party group established concurrent with the new 'Together' strategy would examine the issue of dealing with the past.<br><br>In relation to the specific commitments at Weston Park the two governments did appoint former Canadian **Judge Peter Cory** who published his **collusion inquiry** reports in 2003, recommending a number of public inquiries. The UK government then however introduced the Inquiries Act 2005 which subordinated inquiries to the unprecedented control of a government minister. The Nelson, Wright, and Hamill inquiries have concluded although the latter has not been published pending prosecutions; The Breen and Buchanan inquiry (Smithwick Tribunal) is ongoing. In October 2011 the UK government unilaterally announced it was reneging on its commitment to the Finucane inquiry, instead appointing Desmond da Silva to undertake a review of papers, published in December 2012. |

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| **Reconciliation and Integration Policy** | B/GFA included recognition of "**work being done by many organisations to develop reconciliation and mutual understanding and respect**" and pledged continuing support for such organisations. The Agreement also stated "**An essential aspect of the reconciliation process is the promotion of a culture of tolerance at every level of society,** including initiatives to facilitate and encourage integrated education and mixed housing."<br><br>In the 2003 Joint Declaration the two governments referencing a 'deeply divided society' recognised the importance of "**improving community relations, tackling sectarianism and addressing segregation, including initiatives to facilitate and encourage integrated education and mixed housing".** The British government committed to 'encouraging' the devolved administration to review community relations policy. The **Joint Declaration also envisaged 'many of' the rights affirmed in the B/GFA would be given legislative effect through the Bill of Rights, Single Equality Bill and 'legislation to tackle racism and sectarianism'.** | The B/GFA marked a shift towards human rights and equality frameworks and away from the primacy of community relations based approaches making only passing reference to the same, despite such approaches being dominant in official policy before the B/GFA. There was a review of community relations policy and following the Joint Declaration government did issue a high level 'Shared Future' strategy. There were concerns from organisations such as CAJ that the Shared Future blueprint risked rolling back the equality framework of the agreement (and lead to a shared but unequal future). Far from promoting a culture of tolerance there is increasing concern that current interpretation and application of the concept of 'good relations' can lead to equality initiatives being obstructed on the basis of prejudice. The devolved executive consulted on a revised draft 'Cohesion Sharing and Integration' strategy in 2010 in which a (still undefined) model of 'good relations' was the predominant concept. This was criticised by the Council of Europe Framework Convention Advisory Committee. In 2013 the Executive adopted the '*Together: building a United Community*' strategy and a working group of executive parties to come up with recommendations on matters including parades and protests; flags, symbols, emblems and related matters and dealing with the past.<br><br>The **Bill of Rights and Single Equality Bill have not been taken forward**. In 2004 **'hate crimes'** legislation was passed providing for aggravated sentences for existing crimes on racist or sectarian (and later homophobic/disability hatred) grounds; however for a range of reasons within the criminal justice system there have been only a small number of aggravated sentences being handed down. |
| **Equality of treatment for the 'two main communities'** | **Citizenship and National Identity:** The B/GFA provided that it was: "the birthright of all the people of Northern Ireland to **identify** themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both **British and Irish citizenship** is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland." | ***Citizenship***: Irish state changed laws (Nationality and Citizenship Act 2001) to move from a 'compulsory' to a 'voluntarist' approach – i.e. all persons born in NI were regarded as Irish citizens, now it is an entitlement– (however Ireland changed the law in 2004 to exclude migrants from entitlements); the UK has not changed the law (British Nationality Act 1981) and continues to make British nationality compulsory on persons born in NI (again excluding migrants); ***National Identity*:** generally recognised in policy by UK government (e.g. aborted ID cards regime had separate cards for those wishing to identify as British or Irish); fair employment legislation still continues to exclusively use 'religious belief' and 'political opinion' as grounds rather than also using nationality. |

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| | **Symbols/ Emblems:** The B/GFA stated "All participants acknowledge the **sensitivity of the use of symbols and emblems for public** purposes, and the need in particular in creating the **new institutions** to ensure that such symbols and emblems are used in a manner which promotes mutual respect rather than division. Arrangements will be made to monitor this issue and consider what action might be required" | The **Assembly and PSNI** were created with new symbols with legislation preventing the PSNI from flying the Union Flag (or other national flags) under most circumstances (Police Emblems and Flags Regulations (Northern Ireland) 2002.). The UK government legislated in 2000 to oblige government departments to fly the union flag on designated days and not flown on other days (previously 'by custom' flown all year, UK regarded this as compromise). This did not apply to Councils, who have adopted their own differing policies. Flags, symbols and emblems are to be considered with by the multi-party group under the Executives new Together strategy . |
| | **Sovereign power/ Equal Treatment:** the B/GFA requires the SoS at any time it appears likely that a majority of persons in Northern Ireland would vote for a united Ireland to hold a poll to that end. Regardless the power of the government with jurisdiction is to be "exercised with **rigorous impartiality on behalf of all the people in the diversity of their identities"** founded on full respect for rights and "**parity of esteem and of just and equal treatment for the identity, ethos and aspirations of both communities**;" parity of esteem and equality of treatment for the identity of the two main communities is also referenced elsewhere in the B/GFA. | There remains **no legislative framework** to put the commitments to '**parity of esteem'** into enforceable practice; the Bill of Rights was to have included a general obligation on public authorities to fully "**respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland**;" but has not been implemented; there is no specific policy framework to ensure the rigorous impartiality' of the sovereign government beyond the general protections of anti-discrimination and equality legislation. |
| **Prisoner Reintegration** | **Prisoner releases:** B/GFA committed the government to release prisoners from paramilitary groups on ceasefire after two years (for offences before the B/GFA). Weston Park also dealt with the issue of 'on the runs' indicating that the governments would take 'such steps as are necessary' to not pursue outstanding prosecutions relating to offences committed before April 1998. | **Paramilitary prisoner release did take place after two years**, this was undertaken, as is the case for some other prisoners, under a 'licence' system where persons can be recalled to prison. The recall system involves the SoS and a Commission which can rely on a closed material procedure (i.e. act as a secret court).<br><br>There has been a long term lack of clarity in relation to prosecutions of 'on the runs', with legislation - (Northern Ireland (Offences) Bill) 2005 – which also provided broader immunity - ultimately withdrawn. |
| | B/GFA stated "The Governments continue to recognise the importance of **measures to facilitate the reintegration of prisoners into the community** by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, re-training and/or reskilling and further education."<br><br>St Andrews committed the government to working "with business, trade unions and ex-prisoner groups to produce **guidance for employers which will reduce barriers to employment** and enhance re-integration of former prisoners." | OFMdFM did establish a **working group** which, in 2007, produced employer guidance on 'Recruiting People with Conflict Related Convictions" which stated its 'basic principle' is 'that any conviction for a conflict-related offence that pre-dates the Good Friday Agreement (April 1998) should not be taken into account unless it is materially relevant to the employment being sought' However contradictions have arisen with fair employment legislation, which is also under the responsibility of OFMdFM. There has not been amendment to date of the Fair Employment and Treatment (NI) Order 1998 exemption under the discrimination category of 'political opinion' for opinions "which include approval of violence for political ends connected with the affairs of Northern Ireland." In 2013 legislation in the Northern Ireland Assembly precluded persons with serious convictions from working as **Special Advisors** to ministers. |

## Appendix 2: Delegates List

| Attendees (in alphabetical order) | | Organisation (if applicable) |
|---|---|---|
| **Allaion** | Sean | |
| **Alvarez Berastegi** | Amaia | Transitional Justice Institute |
| **Archbold** | Claire | Department Solicitors Office |
| **Antova** | Ivanka | CAJ volunteer |
| **Barnes** | Olivia | |
| **Beirne** | Maggie | Former CAJ Director |
| **Beyers** | Mick | Former CAJ Policing Programme Officer |
| **Bleiwise** | Jennifer | 174 Trust |
| **Boyce** | Sara | Include Youth |
| **Brecknell** | Alan | Pat Finucane Centre |
| **Bradley** | Ciaran | Equality Commission for Northern Ireland |
| **Braithwaite** | Paul | 174 Trust |
| **Bray** | Patricia | Disability Action |
| **Bunting** | Mairead | Office of the Attorney General |
| **Butler** | Paul | Relatives for Justice |
| **Campbell** | Flair | |
| **Cappa** | Bronagh | Office of Public Achievement |
| **Carberry** | Shauna | Relatives for Justice |
| **Cash** | Fiona | CAJ volunteer |
| **Cooper** | Janet | Dept of Agriculture and Regional Development |
| **Corrigan** | Patrick | Amnesty International |
| **Coyle** | Deaglan | Queen's University, Belfast |
| **Cunningham** | Alan | |
| **Curran** | Laura | |
| **Deery** | Coimbhe | PILS project |
| **De La Torre** | Alexandra | |
| **Dickson** | Brice | Queen's University, Belfast |
| **Dignam** | Dermot | Queen's University, Belfast |
| **Dooley** | Pamela | UNISON |
| **Drinan** | Padraigin | |
| **Dudgeon** | Geoffrey | |
| **Dudley** | Rebecca | |

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| **Duffy** | Jane Ann | Dept of Foreign Affairs |
| **Ellis** | Sarah | CAJ volunteer |
| **Enright** | Cadogan | Down District Council |
| **Enright** | Brenda | |
| **Farrell** | Michael | FLAC |
| **Fiedler** | Rune | CAJ |
| **Fitchie** | Sharon | Dept of Agriculture and Regional Development |
| **Flynn** | Helen | Human Rights Consortium |
| **Friers** | Fiona | |
| **Friers** | Rod | |
| **Gilmore** | Aideen | Plan A (Human Rights) Consulting |
| **Glackin** | Adrian | STEP |
| **Glackin** | Khara | STEP |
| **Gormally** | Brian | |
| **Hainsworth** | Paul | CAJ Director |
| **Hanratty** | Kevin | Human Rights Consortium |
| **Harper** | Irene | South Belfast Senior Forum |
| **Hargey** | Finton | Queen's University, Belfast |
| **Harvey** | Colin | Queen's University, Belfast |
| **Hawkins** | David | PILS Project |
| **Hearty** | Kevin | Queen's University, Belfast |
| **Holder** | Daniel | CAJ Deputy Director |
| **Jarman** | Neil | Institute for Conflict Research |
| **Kearney** | Donal | CAJ volunteer |
| **Kelly** | Luke | |
| **Kelly** | Dominic | Queen's University, Belfast |
| **Kelly** | Nuala | |
| **Kelly** | Paddy | Children's Law Centre |
| **Kennedy** | Stephen | UNISON |
| **Kiel** | Felice | Northern Ireland Council for Ethnic |
| **Langlaude** | Sylvie | Human Rights Centre, QUB |
| **Lavery** | Eileen | Equality Commission for Northern Ireland |
| **Lawther** | Cheryl | |
| **Leghtas** | Izza | Human Rights Watch |
| **Lewerentz** | Christiane | |
| **Lundy** | Patricia | University of Ulster |

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| **Lyons** | Donal | CAJ |
| **Macormac** | Helena | Northern Ireland Council for Ethnic Minorities |
| **Maginness** | Alban | MLA |
| **Maguire** | Tara | Office of the Police Ombudsman for NI |
| **Mahaffy** | Thomas | UNISON |
| **Mallinder** | Louise | Transitional Justice Institute |
| **Marshall** | Chelsea | Save the Children |
| **Martin** | Anthony | Trevor Smyth Solicitors |
| **Martynowicz** | Agnieszka | |
| **Matthews** | Angela | Royal Courts of Justice |
| **McAleer** | Liz | CAJ |
| **McBride** | Alan | WAVE Trauma Centre |
| **McBride** | Helen | Hollaback, Belfast |
| **McCabe** | Barbara | University of Strathclyde |
| **McCallan** | Mary | WAVE Trauma Centre |
| **McCausland** | Fiona | |
| **McCormick** | Paul | UNISON |
| **McCusker** | Fergal | |
| **McEvoy** | Kieran | Queen's University, Belfast |
| **McKee** | Margaret | UNISON |
| **McKenna** | Maura | UNISON |
| **McKenna** | Julie | |
| **McKeown** | Gemma | CAJ |
| **McKeown** | Patricia | UNISON |
| **McNeilly** | Kathryn | |
| **McWilliams** | Monica | Transitional Justice Institute |
| **Minogue** | Orlaith | |
| **Mitchell** | Chris | |
| **Moffett** | Luke | |
| **Moore** | Clare | Irish Congress of Trade Unions |
| **Morgan** | Oliver | Dungannon Council |
| **Muller** | Janet | POBAL |
| **Murphy** | Niall | KRW Law |
| **Murphy** | Pauline | University of Ulster |
| **Nesbitt** | Dermot | |
| **O'Connell** | Fiona | Northern Ireland Assembly |
| **O'Neill** | Kathleen | |

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| **O'Rawe** | Mary | Former Chair of CAJ |
| **Ozonyia** | Peter | |
| **Patterson** | Emma | CAJ |
| **Pierson** | Claire | University of Ulster (PhD student) |
| **Raj** | Kartik | Amnesty International |
| **Redmond** | Monica | |
| **Reilly** | Adrienne | CAJ |
| **Reynolds** | Sea | |
| **Rolston** | Bill | Transitional Justice Institute |
| **Rooney** | Nicola | Catholic Bishops Conference |
| **Russell** | David | Northern Ireland Human Rights Commission |
| **Scullion** | Geraldine | |
| **Shaw** | Willaim | 174 Trust |
| **Simpson** | Mark | |
| **Stevens** | Angela | Northern Ireland Human Rights Commission |
| **Sutherland** | Andrew | WAVE Trauma Centre |
| **Tate** | Michelle | Equality Unit, Southern Trust |
| **Thompson** | Mark | Relatives for Justice |
| **Trimble** | Marjorie | UNISON |
| **Van Maanen** | Hank | Centre for Conflict Management, Netherlands |
| **Ward** | Kate | Participation and Practice of Rights (PPR) |
| **Yarnell** | Priyamvada | |
| **Yu** | Patrick | Northern Ireland Council for Ethnic Minorities |


Professor Colin Harvey opening the conference, 26th April 2013

CAJ
Committee on the Administration of Justice
Promoting Justice / Protecting Rights

Queen's University Belfast

University of Ulster
transitional justice institute