

Through the Lens of International Law: The Stormont House Agreement

The Stormont House Agreement was publicly released in what might be best described as the governmental graveyard shift just before the lights went off in governmental buildings for Christmas on December 23rd 2014. The Agreement addresses a series of contentious issues that continue to trouble the transitional landscape in Northern Ireland. These include flags, identity, culture, the past, institutional reform, a bill of rights, language rights and implementation of previous agreements. The Agreement is prefaced by the following description:

After 11 weeks of talks at Stormont, this agreement was reached with Northern Ireland's political leaders, providing a new approach to some of the most difficult issues left over from Northern Ireland's past.

The Stormont Preface states that the Agreement was issued by the Northern Ireland Office on behalf of the Secretary of State Theresa Villiers MP. Before addressing the complete absence of international law and international human rights anchoring in the document, a brief reflection on format. The form and status of the Stormont Agreement arguably constitutes backslide on the Belfast Agreement, not least in the marginal presence of the Irish government as a formal guarantor to this document (though the Outstanding Issues Section marginally references a role for the Government in the Republic as does the section addressing the Independent Commission on Information Retrieval). It is worth reminding readers that the Belfast Agreement was a negotiated document composed of three interconnected and organic strands. Strand two regulated bi-lateral relationships between Northern Ireland and the Republic of Ireland, Strand 3 addressed multi-lateral relationships between Northern Ireland, the United Kingdom and the Irish Republic. In addition to creating a binding political agreement between the negotiating parties, the Agreement also created a binding treaty in international law between the two state parties. Guarantor state have played an essential part in solidifying transitional agreements in many divided societies, and Northern Ireland is no exception. The turn to domestication in the Stormont House Agreement (arguably the culmination of a pattern) is one that weakens rather than strengthens the basic legal and political premise upon which the peace process was established, namely the bi-lateral and appropriately weighted role of two interested states in making and enforcing peace and is one that ought to concern observers.

As readers will also recall, both the Belfast Agreement and the St. Andrews Agreement were deeply infused with the language and formalities of international human rights law. Human rights protections were affirmed as integral to the causes and resolution of conflict. In many ways the core issues still stalking implementation are *contd...*

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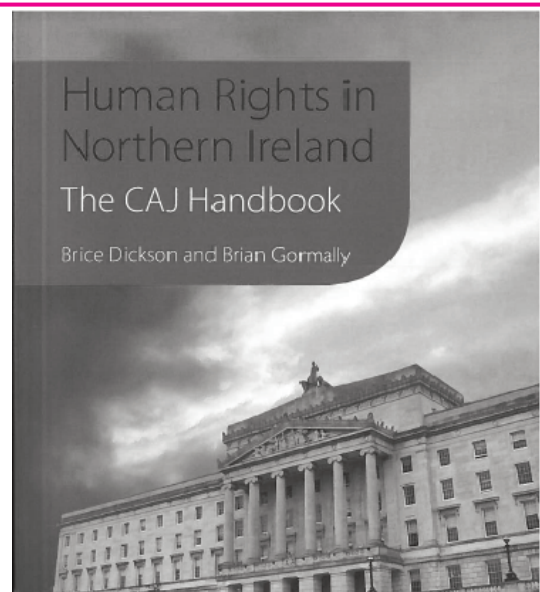
rights related. The right to cultural identity, the right to freedom of expression and assembly, the right to life, the right to due process, and the right to a remedy. Despite the intrinsic relationship between rights enforcement and unresolved issues of the past and legal regulation of national and individual identity, the Stormont House agreement is bereft of any anchoring language in human rights or best transitional practice.

Aside from the European Convention, whose procedural requirements clearly permeate the dealing with the past dimensions of the Stormont Agreement (HIU and a revised Inquest procedure) no explicit requirement is articulated for making the plethora of newly created mechanisms compliant with best international practice. Moreover, given that appointment to these various bodies is largely left to local political cherry-picking, one could reasonably worry that rather than bringing neutral international and comparative expertise to Northern Ireland to delve into thorny questions of historical timelines, information retrieval, pattern data, institutional compliance and responsibility, as well as social and economic disadvantage we may get a local party political debate in miniature on all of these important legacy and transformational questions

Lest we forget, there are a range of applicable norms against which the HIU, Inquests, archives, ICIR (Independent Commission on Information Retrieval), IRG (Implementation and Reconciliation Group), and governmental review meetings can be measured. They include (to mention by a few):

- The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law
- Nairobi Declaration on Women's and Girl's Right to a Remedy and Reparation
- United Nations Security Council Resolution 1325 on Women, Peace and Security (which to date has been deemed inapplicable to Northern Ireland by the United Kingdom)
- Convention for the Protection of all Persons from Enforced Disappearance (2010)
- EU Guidelines on Human Rights and International Humanitarian Law (2009)
- The International Human Rights Fact-Finding Guidelines (Lund-London Guidelines) (2009)

In transitional societies, international legal standards are important not only in devising structures for the future human rights protection, but also in evaluating the past. There is a grave danger that a plethora of new entities will emerge from the Stormont House Agreement oblivious to and not required to conform their practices with well-established human rights norms and Guidelines. It remains important for advocates to benchmark any proposal against best international practice and to hold all new institutions and processes to the highest administrative, procedural and substantive rules.



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Conscience Clause

To be fair, we should have seen this coming. Since the goods, facilities and services regulations were enacted in 2006 to prevent discrimination on the grounds of sexual orientation, the traditional opponents of lesbian, gay, bisexual and/or transgender (LGB&T) people have continually attempted to curb their application.

The so-called 'gay cake' case gave the Christian Institute and the DUP their wedge issue. Here was a case which is far from clear-cut. A customer goes into a bakery and pays money for a cake to be made. The bakery accepted the money and agreed to make the cake and a contract is formed between the parties. The bakery then decided that they did not want to make the cake because the message on it, 'Support Gay Marriage' was in conflict with their religious beliefs that LGB&T people should not be entitled to access the right to marry. Deciding not to fulfil an order you have accepted money for is, at the very least, a breach of contract but does it constitute discrimination? The Equality Commission believe so but we will have to wait for a judge's decision on that question.

The 'gay cake' case is one over which reasonable people can disagree, however, hard cases make bad law as the maxim goes and the DUP's proposed 'conscience clause' is so broad and so poorly thought through that it cannot achieve its stated outcome. Surely, if this was about protecting the consciences of people with religiously-based prejudices, it would not solely focus on the sexual orientation regulations. It would allow for discrimination against unmarried straight couples or unwed mothers. Should an evangelical dress-maker be permitted to deny service to a Catholic family who want a dress for their daughter's first Holy Communion? How much more evidence do we need before realising that this is not about protecting the rights of religious people at all, but is just another attempt by the usual suspects to advance and sustain discrimination against persons on the basis of sexual orientation.

The consultation document put out by the DUP is poorly drafted. It is clearly biased, severely lacking in evidence and written in such a convoluted manner that it makes for a very challenging read; relying on emotive language and logical fallacies to force readers into arriving at the same conclusion as the author. Were this 'conscience clause' to become law, it would have a devastating impact on the ability of LGB&T people to participate in their society without fear of discrimination. The law would permit restaurants to turn same-sex couples at the door and landlords to deny a tenancy to a family headed by a same-sex couple. There would be nothing unlawful about a business having a sign in the front window saying 'we do not serve gay people'; eerily reminiscent of the old 'No Dog, No Blacks, No Irish' signs we all thought had been consigned to the dustbin of history.

At The Rainbow Project, our primary concern is not that this proposal will become law. It is not a piece of legislation that is within the legislative competence of the Assembly, it is incompatible with the European Convention on Human Rights and Sinn Féin have committed to blocking its introduction with the petition of concern. Our concerns are on the impacts this discourse will have on the community relations between LGB&T people and the rest of society. There are those who would like to paint this as a cultural war between LGB&T people and people of faith, as if these groups are mutually exclusive, denying the identity of the many LGB&T people of unshakeable faith. But this is not a culture war. LGB&T people are not out there targeting religious people and forcing them to bend to our super gay will. We just want to ensure that we cannot not subjected to the indignity of being denied service because some people don't like the way we fall in love.

Gavin Boyd, The Rainbow Project

The
rainbow
project

Measuring child poverty in Northern Ireland

Each Executive Minister has a statutory obligation to meet the 2010 Child Poverty Act targets, which are reiterated in the 2011-15 Programme for Government. The targets are to reduce relative child poverty to less than 10% by 2020, to reduce absolute and combined child poverty to less than 5%, with a target for persistent low income to be prescribed by regulation before 2015.

The Department for Social Development's (DSD) Households Below Average Income (HBAI) figures for 2012-13 show that 20% of children were living in relative poverty (Before Housing Costs) and 22% (After Housing Costs); 22% were living in absolute poverty (BHC) and 26% (AHC).

Much importance is attached to employment as the chief way to tackle poverty, but more than half of all poor children live in families where an adult is working. Child poverty is becoming a problem of working families, a problem of low wages and insecure work.

Labour market statistics bear this out: average household and individual incomes are currently lower in real terms than they were ten years ago. Northern Ireland's median household income was £414 (BHC) and £373 (AHC) in 2002/03 (at 2012/13 prices). In April 2014 the estimated median gross weekly earnings for all (i.e. both full- and part-time) employees was £358, down 2.2% from £366 in 2013.

On the other hand, the GB-based End Child Poverty Coalition uses HMRC data to report child poverty levels. The 2014 report showed that 20 British parliamentary constituencies and local authorities had the highest levels of child poverty in the UK, whereas in 2013 west Belfast (at 43%) had the second highest level of child poverty in the UK. According to the 2014 figures, west Belfast has reduced to 32%. However, the report concedes:

“on its own it provides an inaccurate picture of actual child poverty, considerably overstating the numbers in out-of-work poverty and understating the numbers in working poverty. While these factors may balance out overall, they can seriously misrepresent the overall trend where working and non-working poverty change in different ways....”

Queen's University Belfast (QUB) works with five other UK universities to produce the Poverty and Social Exclusion (PSE) survey. Arguably, it provides a clearer picture of poverty because it is based on the idea that to be in poverty means that people are excluded from a standard of living that the majority regards as acceptable and that a consensus on what is 'normal' can be established by asking people for their views. Therefore, the 'necessities of life' are defined by a popular consensus rather than by experts or politicians.

According to the latest QUB PSE survey, more than half of children in Northern Ireland (241,000) are growing up in households that could not pay an unexpected expense of £500. One in three adults is unable to make regular savings of at least £20 and 28% cannot make regular payments into a pension because of lack of money; about 75,000 children are living in damp homes; over a third of families cannot afford one or more items central to a child's family life – a week's holiday away from home, a day trip once a month or celebrating special occasions. The number of families unable to afford at least one of four items for a child's educational development has increased and these include children's books, educational games, construction toys and school trips.

In 2008 Save the Children and partners found that 21% of children were living in persistent poverty, attributed largely to the legacy of the conflict. Persistent poverty refers to household income that is less than 60% of the median income for at least three out of the previous four years. This 21% figure was more than double the GB rate in 2008 and many worry that increasing youth unemployment, welfare reform, budget cuts and in-work poverty will recreate the conditions for social distress and unrest.

Therefore, the methodologies and statistics may be variable and complex but there can be no disagreement about the increasing scale of inequality and child poverty. The retrogression is evidenced by the growth of food banks, reports of school children fainting from hunger and warnings about increasing homelessness among young people.

At the time of writing, the Welfare Reform Bill has reached further consideration stage at Stormont but the Commons Select Work and Pensions Committee has highlighted the severe misery already caused by increasing sanctions and benefit delays in England. The New Statesman has highlighted another worrying development in England – it reported on a pilot for 15,000 low-paid working universal credit claimants who may find that their benefits, including the housing element of universal credit, are reduced if they do not actively seek to work more hours or increase their salary. According to the New Statesman, the change is important because this policy goes beyond targeting jobseekers, the sick and disabled. It threatens to further penalise those who are working in low-paid jobs.

Many commentators have warned that welfare reform will have a disproportionate impact on low income families in Northern Ireland. For example, the transition from Disability Living Allowance to the Personal Independence Payment (PIP) will have particular significance, with almost twice the proportion claiming DLA compared with GB. According to the Joseph Rowntree Foundation (JRF) Monitoring Poverty and Social Exclusion report, around a quarter of those reassessed in Northern Ireland are expected to lose their entitlement altogether, with a further third receiving a lower entitlement. The Executive has negotiated changes to Universal Credit such as fortnightly payments, more readily splitting payment between couples and direct payments to landlords for housing elements. In addition it is expected that the bedroom tax will be deferred until more housing stock is available and discretionary funds resourced from the block grant. However, JRF forecasts that welfare changes will compound the longstanding mental health problems, community divisions, deteriorating labour market and poverty levels in Northern Ireland.

These warnings confirm the Institute of Fiscal Studies (IFS) research, Child and Working-Age Poverty in Northern Ireland from 2010-2020, commissioned by Ofmdfm. The IFS has predicted that child poverty will increase across the UK, with the sharpest increase in income poverty among children in Northern Ireland. Its latest update states that relative child poverty will increase to 26% (BHC) and absolute child poverty to 29.3% (BHC) by 2020.

It is vital that the government response is commensurate with the scale of the challenge. As recommended by the Child Poverty Alliance's recent report, *Beneath the Surface*, the Executive should develop a costed child poverty strategy to meet the child poverty targets. It must support inter alia quality jobs, a living wage, universal affordable childcare and independent welfare advice.

At a time of austerity, the Executive must honour its duty to protect low income and vulnerable children under its international human rights obligations and the EC's Recommendation on Investing in Children.

- The Executive must reverse its proposal to exclude children and young people from age discrimination legislation.
- Low income children and their families should be at the centre of community planning and should benefit from the proposed Children's Services Bill to encourage better departmental coordination.
- The different methodologies and statistics must be clarified for a range of audiences, the persistent poverty threshold should be defined and the levels of persistent child poverty included in the child poverty report.
- IFS must be retained to monitor child poverty levels.

It is fundamental that official data is available for decision-making but the publication of HBAI is increasingly being delayed, according to the Royal Statistical Society, as reported in the Guardian. The report argues that the UK government's welfare cuts have caused suffering, cost lives and done nothing to tackle inequality. This adds urgency to the need for timely publication of data to inform debate on the impact of welfare reform in Northern Ireland.

Report Launch: 'The Apparatus of Impunity?'

On the 30 January past CAJ, with Queens University Belfast, School of Law, Business Alliance Project) launched our report 'The Apparatus of Impunity? - Human rights violations and the Northern Ireland conflict: a narrative of official limitations on post-Agreement investigative mechanisms'.



The publication of the report followed shortly after the Stormont House Agreement which signalled new mechanisms to deal with the past would now be established, including a new independent 'Historic Investigations Unit'. In this context this research report brought together in one place a critique of the shortcomings in addressing human rights violations across the mechanisms which have existed since the Belfast/Good Friday Agreement, including the former PSNI HET, Police Ombudsman, Inquests, public inquiries, as well as examining the overarching limitations placed by the UK government on 'national security' matters and other doctrines used to control the provision of evidence to investigators.

The research found that some legacy mechanisms have either been shown not to have the necessary independence or effectiveness to investigate state actors, whilst other mechanisms which have been established as independent, such as the Police Ombudsman's office, have faced limitations on their powers and even interference in their work. The report notes that despite allegations that existing mechanisms over-focus on the state, CAJ had been unable to locate a single case whereby a member of the security forces had been tried and convicted since 1998 as a result of a legacy investigation.

At the launch event the collaborative CAJ-QUB project, overseen by Kieran McEvoy, explained the first stage of the project was to support the production of this report. The next stage is to engage in a process of examining what draft legislation would be required to implement the new mechanisms contained within the Agreement, and producing a model for this, to be presented at a conference after the upcoming Westminster election.

CAJ's Daniel Holder who presented the findings of the report said "The research identifies a range of methods and actions used by various levels of the state to prevent and limit accountability for past actions, including attempts to control access to evidence, the powers, personnel and resources of legacy investigations, to neutralise or 'lower the independence' of key institutions, to and to legislate in the name of 'national security' to provide a growing range of powers which can and have been used to limit legacy investigations. Given the patterns which emerge the evidence does not point to such phenomena being isolated or institution specific. "There are numerous lessons to be learned to ensure existing mechanisms and new institutions



alike have the power, resources and structure they need to conduct human rights compliant investigations into the past without their independence being fettered.”

A panel discussion ensued after the launch, involving CAJ Director Brian Gormally and Dr Cheryl Lawther of QUB sociology department, who is also a board member of CAJ.



Professor Kieran McEvoy school of law; Daniel Holder, CAJ; and Dr Cheryl Lawther, Queens University and CAJ board member

Shoe Exhibition: ‘In their Footsteps - Setting the Truth Free’



One exhibit from the shoe gallery

This is an on-going project between a number of groups including the Bloody Sunday Trust, the Pat Finucane Centre, Ballymurphy Massacre families, Justice for the Forgotten, the McGurks Bar campaign, Loughinisland, Glenanne, the MRF cases and victims of rubber and plastic bullets among many others.

The ‘In their Footsteps-Setting the Truth Free’ exhibition has been displayed on O’Connell St in Dublin and in Derry and Belfast over the summer. A large number of the shoes in the exhibit are from individual families who are not part of any campaign. Every family is welcome to join in where a relative has been killed or seriously injured regardless of who was responsible. All are united in calling for an independent mechanism to be set up to deal with the legacy of the conflict.

Civil Liberties Diary - January 2015

7 Jan

A legal challenge to the abortion law in Northern Ireland will be heard next month, it has been confirmed. Lawyers representing the Northern Ireland Human Rights Commission (NIHRC) plan to argue that the existing law is a violation of Human Rights. Justice Minister David Ford criticises the legal action as ill-timed and unnecessary as his Department is currently doing a public consultation on possible changes to the abortion law.

8 Jan

Chief Constable George Hamilton has been ordered to appear in court to help explain why a crucial report on the murder of Sean Brown by loyalists in 1997 was withheld from an inquest for almost 18 years. So far nobody has been charged with the crime. The full inquest is confirmed to start in March but an ongoing dispute over the disclosure of an unpublished HET report could foil this plan.

13 Jan

As Northern Ireland is the only UK region where same-sex marriages are not recognised, a couple, who lawfully married in England, brought a legal challenge to Belfast's High Court.

14 Jan

Three state agents who are potential witnesses of the abuse at Kincora Boys' Home will be approached about their information on alleged intelligence involvement. Former Army Captain Colin Wallace came forward with an offer to help the investigation team and now it has been confirmed that

he will be able to give evidence without having to face prosecution due to the Official Secrets Act.

15 Jan

Three former MI5 members and the deputy head of RUC's Special Branch during November 1982 are set to be investigated in connection with the alleged withholding, concealing and destroying of audio tapes. It relates to the shooting dead of Michael Tighe (17) and wounding of Martin McCauley (19) by members of the RUC in November 1982.

20 Jan

Craigavon Sinn Féin councillor Gemma McKenna said: "Tonight's decision by unionist councillors follows a full EQIA (equality) consultation which clearly showed there was no interest or support for the flying of the Union flag." Craigavon Council's DUP group leader Carla Lockhart has welcomed the decision by saying: "This compromise on our original proposal of seven locations will strike the right balance between acknowledging Northern Ireland's constitutional position and not causing offence to those who oppose it."

22 Jan

Michael Gallagher, father of one of the Omagh bombing victims, has won the legal right to challenge the Government's refusal to hold a public inquiry into the atrocity. No one has ever been convicted of carrying out the attack, but Seamus Daly is currently charged with the 29 murders, which he denies. Mr Gallagher's lawyers argue that the terrorist attack could have been prevented by the British intelligence.

23 Jan

The former loyalist prisoner Winston Rea is seeking to judicially review the Public Prosecution Service's attempts to obtain the interviews he provided for a project designed by the Boston College to establish an oral history of the Troubles. The agreement originally said that the tapes would not be published until after the participant's deaths. Those assurances were dealt a blow when detectives investigated in the murder of Jean McConville in 2013.

30 Jan

It has been warned that members of Northern Ireland's legal profession are planning strike action which could be on an even greater scale than that held in 2011 and could potentially shut down the court system. The discontent is caused by a proposal by Justice Minister David Ford to subject publicly funded legal aid payments to a new levy of up to 15%.

Compiled from various newspapers

Just News

Just News welcomes readers' news, views and comments.

Just News is published by the Committee on the Administration of Justice Ltd.

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