

Stormont House Agreement – a lot still to do

At the very end of 2014, the Stormont House Agreement was concluded by the UK and Irish Governments and Northern Ireland's major political parties. It covered Finance and Welfare, Flags, Identity, Culture and Tradition, Parades, The Past, Institutional Reform and Outstanding Commitments. The Agreement has many intriguing aspects and some pointers towards a more progressive, rights based future. However, both in general, and within each section, how the broad outlines of agreements are actually implemented will be crucial.

So, for example, the sections of the agreement on finance and welfare appear to break the deadlock on how the Executive is to function financially. However, the actual budget for the coming year has still to be agreed and the agenda for "reform", which appears to hollow out the welfare states and slash public sector jobs, does little more than map out the battlefields for important conflicts to come.

On flags, identity and related issues, these matters are kicked down the road to a Commission which is to be established by June and is to report within 18 months thereafter. Parades are to be the subject of legislative changes agreed by the Executive and the appropriate powers will, in principle, be devolved to the Assembly. The section on Institutional Reform, detailing ways in which the structures of devolved government and legislature will change, seems to represent a series of agreements that have already been reached, given the more concrete and specific nature of the language of the Agreement, and not simply vague commitments to be fleshed out in the months ahead.

The section on Outstanding Commitments is interesting in that it brings together many of the unfulfilled commitments in the Belfast Good Friday and subsequent political agreements. Ways forward on some of these matters are suggested, which could be seen as positive – alternatively, some may see the mention of these issues as acknowledgement that they will never be implemented. So, a "compact civic advisory panel" is suggested to allow civil society voices to speak to government, apparently sounding the final death knell for the Civic Forum. Paragraph 68 "endorses the need for respect for and recognition of the Irish language in Northern Ireland, consistent with the Council of Europe Charter on Regional or Minority Languages" – but no mention of an Irish Language Act as promised in the Agreement. These gaps (if that is the case) in relation to existing international treaty obligations need to be addressed swiftly by external and internal pressure points on the political process.

Paragraph 69 references the Bill of Rights in slightly more positive terms, noting that "there is not at present consensus," and going on to commit in general terms to policies of equality, tolerance and integration. At one level we can see this as recognition of current reality but CAJ, amongst others, will be working to ensure that the Bill of Rights remains a key objective as part of building a rights based society. This paragraph also mentions shared and integrated education and housing and

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“in particular community development and the advancement of women in public life.” There is no detail on how any of this is to be progressed and it has been suggested that Paragraph 69 serves as a call to battle on issues vital for social, community and women activists.

The section on The Past is clearly of major interest to CAJ. We have consistently argued that the failure to properly investigate past deaths and serious injuries is a contemporary violation of human rights rather than an obligation fading into irrelevance as time goes by and “the past” becomes more distant.

In summary, the Stormont House Agreement states that the Historical Investigations Unit (HIU), the single investigative mechanism provided for in the Haass-O’Sullivan Proposed Agreement, will now be implemented. The HIU would take on the unfinished conflict-related cases from the HET and Police Ombudsman, as well as other cases where new evidence emerges. This includes past HET cases deemed as ‘requiring re-examination’ due to flaws in the original review.

No specific timetable for the establishment of the HIU is laid down. However, the Haass-O’Sullivan Proposed Agreement stated that case transfer from the HET and Police Ombudsman would occur once the HIU was fully established. This would prevent any use of an apparently agreed process which is then delayed or reneged on to be used simply to further delay investigations. This is particularly relevant to Police Ombudsman cases given that the agency, notwithstanding some gaps in its powers and cuts to its resources, has again established its credentials of conducting independent investigations. More complex is the ongoing role of legacy PSNI investigations, including those by the Legacy Investigations Branch (LIB) which has succeeded the HET, given that in our view such a PSNI unit lacks the requisite independence to examine state involvement cases (see CAJ paper on the independence of the PSNI on our website: <http://www.caj.org.uk/contents/1240>).

CAJ understands that the UK government also unsuccessfully sought to merge legacy inquests within the HIU. The final text of the Agreement makes clear Inquests will continue to be a separate process, and that the NI Executive will bring forward changes to address deficiencies in the Inquest process which impact on Article 2 ECHR compliance.

The financial annex to the Stormont House Agreement states that the UK government will now contribute to the costs of the HIU and the other bodies the Agreement proposes to deal with the past. This confirms the view of the Council of Europe Commissioner for Human Rights articulated in his recent visit to Belfast (Nov 2014). Up to £30m a year for five years will be made available for this. It is not clear if the UK commitment is conditional on the implementation of other entirely unrelated matters, such as the implementation of welfare cuts.

The UK government does not have a great track record in implementing agreements in good faith. As CAJ has consistently emphasised, whilst we are supportive of a single mechanism to investigate the past, the devil will really be in the detail. A close eye should be kept on the emerging legislation, to ensure it is not used to roll back or qualify commitments.

One of the ongoing issues of concern is the question of disclosure of evidence held by state agencies. The Agreement is strongly worded in that it commits the UK government to full disclosure to the HIU. What is qualified is onward disclosure from the HIU. It states that Westminster legislation will provide for the HIU being subject to equivalent measures on existing bodies to prevent any damaging onward disclosure of information by the HIU ‘in order to ensure no individuals are put at risk’ and the state duty ‘to keep people safe and secure’ is upheld. It is important that the ‘national security’ shutter is not allowed to creep back into the HIUs work, and the wording of legislation would be crucial.

Stormont House Agreement Commits to Inquest Reform

Inquests are increasingly being seen as means by which the procedural, investigative requirements of ECHR Article 2 can be discharged by the UK. Given the troubled history of inquests in Northern Ireland, this is a remarkable development. The Special Powers Act allowed the state to refuse or manipulate an inquest and even after those provisions ended, inquests here had fewer powers and lesser scope than in other UK jurisdictions. Many of these changes to domestic inquest procedure were designed to limit probing of state responsibility for deaths during the course of the conflict. However, various reforms to the process – mainly prompted by cases before the European Court of Human Rights – and the weakness of other elements of the “package of measures” for dealing with the past, means that in some cases, inquests are currently the only chance of a proper investigation.

An inquest compliant with the ECHR Article 2 investigative obligation will determine: who the deceased was; how, when and where he or she died; and what were the broad circumstances surrounding the death. The purposes of an inquest include ensuring “so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrong-doing (if unjustified) is allayed...” It has been held that:

The purpose of an inquest is to investigate fully and explore publicly the facts pertaining to a death occurring in suspicious, unnatural or violent circumstances, or where the deceased was in the custody of the state, with the help of a jury in some of the most serious classes of case. The coroner must decide how widely the inquiry should range to elicit the facts pertinent to the circumstances of the death and responsibility for it. (Re Jordan and McCaughey 2007)

During the course of the negotiations for the Stormont House Agreement CAJ understands that the UK Government advocated ending legacy inquests and subsuming them within the proposed Historical Investigations Unit (HIU). This was not accepted and the Stormont House Agreement ultimately stated:

Legacy inquests will continue as a separate process to the HIU. Recent domestic and European judgments have demonstrated that the legacy inquest process is not providing access to a sufficiently effective investigation within an acceptable timeframe. In light of this, the [Northern Ireland] Executive will take appropriate steps to improve the way the legacy inquest function is conducted to comply with ECHR Article 2 requirements.

Some of the problems that, in CAJ’s view, prevent the current inquest system being fully compliant with Article 2 are:

- the process of appointing a jury preserves the anonymity of potential jurors and therefore there is inadequate provision for vetting jurors who may have a conflict of interest or potential bias;
- an inquest jury in Northern Ireland, unlike in England and Wales, needs to reach a unanimous decision;
- there are protracted delays and litigation involving the Police (PSNI) and armed forces ministry (MOD) in relation to disclosure to next-of-kin;
- there are concerns about failures to secure attendance of security force personnel at the hearing; and
- inquests continue to be subject to excessive delays.

It is important that the “steps” to be considered by the Executive, presumably involving both legislation and organisational changes, deal fully with the above issues. In particular, the issue of delay caused by the deeply flawed process of disclosure of relevant materials from the PSNI must be dealt with.

More information and discussion on this matter can be found in Chapter 7 of the new CAJ/Queen’s University Law School publication “The Apparatus of Impunity? Human rights violations and the Northern Ireland conflict: A narrative of official limitations on post-Agreement investigative mechanisms.”

“Free and equal in dignity and rights”

The Dignity and Rights: A framework for the future conference was jointly hosted by a variety of organisations who have worked on human rights and equality issues in Northern Ireland for many years: Age NI, CAJ, Children’s Law Centre, Disability Action, Human Rights Consortium, and NICEM. To mark International Human Rights day a two day conference was held in December 2014 entitled ‘Dignity & Rights - A framework for the future’. Building on the vision of the Universal Declaration of Human Rights that “all human beings are born free and equal in dignity and rights” the event billed itself as an opportunity to re-establish the connections between human rights and human beings, with a view to building a positive and shared vision for the future that has people at its core.

Attendees heard that the concept of human dignity underpins universal human rights but that this can often be forgotten when focussing on the methods and infrastructure required for the process of implementation.

The conference, chaired by both BBC’s Noel Thompson (Day 1) and Mark Carruthers (Day 2), also took stock of where we are in Northern Ireland sixteen years on from the Good Friday Agreement. Those in attendance heard that while there has been progress in implementing the Good Friday Agreement and much has been achieved, Northern Ireland is still struggling to come to terms with its past; and respect and working in partnership often seem a distant goal.



© by Stan Nikolov Alan McBride, Wave

Alan McBride opened the conference by sharing his personal story and reflecting on the theme of dignity and rights. “It’s only when you’ve had your human rights taken away, have had them abused, that you realise just how precious they are”. Alan went on to say that for him “human rights are all about freedom and choice; freedom to get a job, to choose a partner, to have an education, to have an adequate standard of living, to have a home”. Alan went on to say that the Good Friday Agreement had presented a great opportunity but also that there was unfinished business. Highlighting the Bill of Rights as one such area, Alan emphasised the need to bring human rights back to the people.

The Chief Constable of the PSNI, George Hamilton carried this theme of the human focus by telling the conference that “Human rights were built into the foundations of the PSNI by the Patten Report. Addressing those in the audience who had felt let down by previous delays in investigations into the past the Chief Constable said “Delay not only increases hurt; it also erodes trust in the PSNI’s ability to deal with the past; and causes huge damage to public confidence in policing in the present day. However he went on to say that the solution ‘lies well beyond the remit of policing’ and that ‘a more societal approach’ was required’.

Monica Wilson from Disability Action followed the Chief Constable by looking at the role of civil society in promoting dignity and humanity. She expanded upon her own philosophy of giving to every human being the rights you claim for yourself. Emphasising the need for more education and training on what human rights actually means, Monica echoed Alan McBride by saying that ‘sometimes humanity is forgotten’ and the importance of always keeping paramount ‘basic humanity and dignity’.

The need for a vibrant and engaged civil society was also addressed by Nicola Browne of the Participation and the Practice of Rights project (PPR). Outlining their projects on housing and employment, Nicola told the conference that the ethos of PPR's work was encapsulated by the expression 'Nothing about us, without us, is for us'. Edel Quinn of Age NI and Helen Ferguson of Carers Northern Ireland both related to the conference their own work and the issues that they faced on a day to day basis.

The former Council of Europe Commissioner for Human Rights, Thomas Hammarberg also addressed the conference outlining the key challenges for human rights activists across Europe; migration, state responses to terrorism and surveillance post the 11th September attacks. Thomas had previously led an Amnesty International delegation to Belfast in 1971 to investigate allegations of internees subjected to brutal physical interrogation methods combined with measures of 'sensory deprivation' – the Hooded Men case. At the conference Thomas had the opportunity to be reunited with 'The Hooded Men' shortly after the announcement that the Irish government were seeking to reopen the case.

International experts Dalile Antunez of the Asociación Civil por la Igualdad y la Justicia in Argentina, Biraj Patnaik of the India Supreme Court Commissioner and Sindi Blose from the Treatment Action Campaign in South Africa also told of their experiences in seeking justice on legacy issues in Argentina, a right to food and basic welfare in India and in securing treatment for those living with HIV in South Africa.

Mike Posner, the former U.S. Assistant Secretary of State for Democracy, Human Rights and Labor, in his role as rapporteur for the conference said the way to achieve progress was to 'create an agenda too large for elected representatives to ignore'. Drawing on his own experience as a campaigner he outlined the need to build 'coalitions for change, incorporating a wide variety of civil society organisations'.



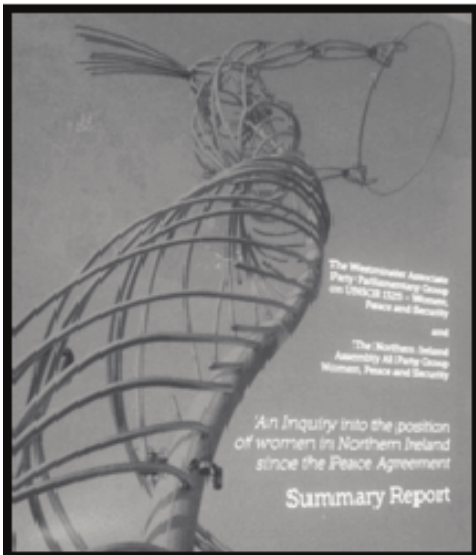
(from left to right)

Back row: Brian Gormally of CAJ, Kevin Doherty from Disability Action and Jane Connors from the Office of the UN High Commissioner for Human Rights, Junior Minister Jennifer McCann, Noel Thompson of the BBC

Front Row: Patrick Yu of NICEM, Paddy Kelly of the Children's Law Centre, Monica Wilson of Disability Action, Fiona McCausland of the Human Rights Consortium, Alan McBride of Wave Trauma Centre and Duane Farrell of Age NI

Women, Peace

The Northern Ireland Women's European Platform (NIWEP) launched the report '**Inquiry into the position of women in Northern Ireland since the peace agreement,**' on Monday 19 January. The report was a joint launch by the Westminster Associate Party Parliamentary Group on UNSCR 1325 Women, Peace and Security and the Northern Ireland Assembly All Party Group on Women, Peace and Security in the House of Lords.



The report comes a little over a year after the inquiry's oral evidence session at Parliament Buildings in December 2013 and four years after the initial call for written evidence in September 2011. The report comprehensively shows the position of women in Northern Ireland since 1998 in their own words and from the testament of bodies set up to protect the rights of women such as the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission, to name but a few of the contributors. The glaring omission to this Inquiry report is the view of the Office of the First and Deputy First Minister (OFMDFM), the department responsible for producing and reviewing the gender equality strategy. This omission starkly highlights the very issues outlined in the report, that women feel they have no voice, that they are not listened to when they do speak, or are silenced and that politicians are not actively engaged in communities.

High level strategies also produced by OFMDFM do not reference women such as the new shared future document 'Together: Building a United Community and the Stormont House Agreement had very few women involved in the negotiations and has also only one mention of women;

'the parties commit to serving the people of Northern Ireland equally, and to act in accordance with the obligations on government to promote equality and respect and to prevent discrimination; to promote a culture of tolerance, mutual respect and mutual understanding at every level of society, including initiatives to facilitate and encourage shared and integrated education and housing, social inclusion, and in particular community development and the advancement of women in public life.'

The report is split up into five different areas, Gender Equality, Women and Electoral Politics, Women in Local Communities, Women in Decision Making and Violence against Women. Following the oral evidence session it was agreed that further evidence should be received from young women and rural women and further roundtable discussions were held with these groups to inform this final report.

The Northern Ireland Assembly All Party Group on Women, Peace and Security are going to use these recommendations to influence their work on women in public and political life and any action could run alongside any recommendations that come out of the Assembly Review Committee's review of women in politics and the Northern Ireland Assembly. For copies of the Inquiry report please contact NIWEP details at www.niwep.org.uk

Women have been written out of issues to do with legacy of the past as their issues have been seen as secondary or personal, yet there are big issues to be dealt with.

and Security

Ireland's second National Action Plan on Women, Peace and Security 2015-2018



Ireland launched their second National Action Plan on Women, Peace and Security on Wednesday 14 January. The plan was officially launched by Charles Flannigan TD in Dublin Castle at the Department of Foreign Affairs and Trade Conference “Representing the Global Island” after the session “Global Challenges post-2015.”

As Mr Flannigan stated in his introduction, UNSCR 1325 has been in existence from the year 2000 but it became apparent by 2010 that there was a wide spread failure to implement the actions within 1325. Ireland took their lead on UNSCR 1325 Women, Peace and Security in three ways. Firstly in their peace keeping missions, secondly in their overseas development aid and lastly using their unique experience of conflict resolution on the island of Ireland, most recently during 2014 and the negotiations around the final Stormont House Agreement. Ireland tendered for an independent review of their first National Action Plan and this showed that that the plan had indeed been implemented; Mr Flannigan stated in his speech that simply having a plan is not enough but making sure it has an impact is crucial for any lasting change.

The second National Action Plan was developed with a consultative group which includes academics and experts from Northern Ireland. There are actions for Northern Ireland in some of the Pillars (see below) and the Department of Foreign Affairs and Trade will continue to fund women's groups in the North (19 have been funded previously). Pillar 2 – **Empowerment, Participation and Representation of Women in Decision Making** has a commitment to,

‘Support the empowerment and participation in decision making of women on the Island of Ireland, including those affected by conflict.’

“Peace is so much more than just the absence of conflict. Sustainable peace is best built with the full participation of women at all stages.”

Charles Flannigan, T.D. Minister for Foreign Affairs and Trade

The actions connected to this go on to say that a North/South Consultative Forum will be established with high level official and political engagement to further look at the cultural, economic and social issues including the advancement of women in public life.

Pillar 4 – **Promotion of Women, Peace and Security agenda in International, Regional and National Areas** states an action to,

‘Promote women's experience and expertise in peace building in Northern Ireland / Ireland within the international arena, including by highlighting women role models.’

It seems in the absence of UNSCR 1325 being applied in Northern Ireland there are ways of working with partners to afford the women of Northern Ireland the protections and advancements they deserve in a post conflict society and in further peace building measures.

Civil Liberties Diary - November/December 2014

6 November

The Equality Commission has threatened legal action against Ashers Baking Company if it refuses to pay compensation after declining to bake a cake that supported gay marriage. The Equality Commission asserts that Ashers Baking Company has breached political discrimination laws and would bring a case on that basis.

A report by the Education and Teaching Inspectorate found that there are significant failings in Northern Ireland schools. According to the report, 21,000 children in Northern Ireland attend schools that need to be improved, 5,000 children are leaving primary schools without good standards in literacy and numeracy, 1 in 3 secondary schools cannot be evaluated as 'good', and 40% of students do not achieve five good GCSEs.

20 November

Bernadette Smyth was convicted of harassment against Dawn Purvis, director of the Marie Stopes clinic in Belfast. Bernadette Smyth, the most prominent of anti-abortion campaigners protesting at the Marie Stopes clinic, was told she will be subject to a restraining order, must pay compensation and her sentence could range from community service to a custodial term in prison. Judge Holmes stated that 'this case was run, no-holds barred, in a vicious and malicious fashion'.

27 November

PSNI statistics have indicated a steady increase in homophobic crimes since 2006. In the latest report, more than five

homophobic incidents a week are reported to the PSNI. 280 incidents were reported in 2013/2014, a 40% increase in reported attacks since 2011. Reports from previous years show 245 attacks in 2012/2013 and 200 incidents in 2011/2012.

28 November

There was a 489% increase in the demand for free food parcels supplied by food banks in Northern Ireland. A report by Advice NI detailed this increase and reported a related increase in referral services for debt, counselling and other statutory and community services to ensure that immediate needs are met.

3 December

One fifth of streets have had contentious flags removed following complaints made to the Department for Regional Development (DRD). Complaints were made regarding hundreds of flags being flown in 35 areas across Northern Ireland over the past three years. The DRD intervened to remove flags in seven of these communities. The flags were primarily removed from Co Tyrone, Belfast and Armagh areas.

5 December

Chief Constable George Hamilton announced that the PSNI will set up a new legacy unit to replace the Historical Enquiries Team. The new Legacy Investigations Branch (LIB) will include the Bloody Sunday Investigation and the re-examination of on-the-run cases within its remit.

8 December

DUP MLA Paul Givan has launched a Private Member's Bill

to introduce a 'conscience clause' into legislation. The 'conscience clause' would require 'reasonable accommodation' to be made to allow religious service providers to refuse service to those would violate their religious ethos.

11 December

The Department of Justice has branded the legal action taken by the Northern Ireland Human Rights Commission over existing legislation on abortion as 'ill-timed and unnecessary'. The Human Rights Commission wants to change the law so as to give women the right to choose if they wish to terminate a pregnancy in circumstances where the foetus has a fatal abnormality or in cases of rape or incest.

Compiled by Elizabeth Super 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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