

Welcoming a New UN General Comment on Sexual and Reproductive Rights

It is well established that sexual and reproductive rights are guaranteed in international human rights law. Laying the groundwork for widespread recognition of reproductive rights was the 1994 International Conference on Population and the 1995 Fourth World Conference on Women. In an important recent development the Committee on Economic, Social and Cultural Rights adopted a new General Comment (No. 22, 2016) on the right to sexual and reproductive health. The United Kingdom ratified the Convention on Economic, Social and Cultural Rights in 1976. The Committee provides authoritative interpretation of the rights and obligations of states, so this General Comment should be read as indicating how precisely the UK ought to enforce and protect sexual and reproductive health in order to fully comply with its treaty obligations. Article 12 of the Convention sets out the obligation of states to protect the right to the highest attainable standard of health.

The General Comment affirms that the right to sexual and reproductive health “is an integral part of the right to health” found in article 12 of the International Covenant on Economic, Social and Cultural Rights. This robust articulation comes at an important time when women’s access to reproductive health care is under resource, political and legal threat across the globe. Moreover, the emphasis on sexual health affirms in a free-standing way that such a right exists for women—a position that has struggled for recognition in both developed and developing nations. The General Comment recognizes that access to health facilities, services, goods and information is severely restricted in many countries, a reality which is pointedly true in Northern Ireland. The Committee pays specific attention to the intersectional forms of discrimination that are experienced by lesbian, gay, bisexual, transgender and intersex persons in accessing sexual and reproductive health care.

At the heart of the right to reproductive and sexual health lies the concept of non-discrimination. Women and men have the right to sexual health free from violence, coercion and they have the right to exercise autonomy and make free and responsible decisions about their own health. Reproductive and sexual health is viewed as intrinsically linked to other economic and social rights including: the right to safe water, adequate sanitation, adequate food and nutrition, adequate housing, as well as health related education and information. The Committee recognizes that in practice there is a defining link between discrimination, status and access to health:

“In all countries, patterns of sexual and reproductive health generally reflect social inequalities in society and unequal distribution of power based on gender, ethnic origin, age, disability and other factors. Poverty, income inequality, systemic discrimination and marginalization based on grounds identified by the Committee are all social determinants of sexual and reproductive health, which also have an impact on the enjoyment of an array of other rights as well”. (para 8)

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Brexit would mean a “carnival of reaction”

What would be the effect on human rights protection, in general but in particular in Northern Ireland, if the United Kingdom (UK) votes to leave the European Union (EU)? The first question is the extent to which, if any, membership of the EU contributes to the practical protection of human rights in our jurisdiction. In so doing, it is necessary not just to look at the formal legal position, but also at the actual practice and politics of the EU and its institutions.

The positive case for the EU in this respect rests on two main pillars: the Charter of Fundamental Rights and Freedoms and the development and application of equality and anti-discrimination laws. Without going into detail, we can say that these do amount to positive additional protections for human rights.

However, if we look at economic and fiscal policy which emanates from the institutions of the EU, especially during the, so far, eight year long economic crisis, then a somewhat different picture emerges. The response of EU institutions to the crisis has materially reduced social and economic rights and in the last year it has also become clear that the EU policies on migration have dramatically failed and we are now seeing wholesale human rights violations along the borders and within the territory of the EU.

We may take the position that the EU’s human rights account is roughly balanced. What position, then, should human rights activists take in the debate around Brexit? A human rights approach does not give particular guidance on national identity or boundaries, nor on particular constitutional arrangements. However, we have to consider both the political context in which the referendum on the UK’s membership is taking place and also the constitutional context in so far as it may impact upon human rights protections.

The UK Government is proposing the repeal of the Human Rights Act from a perspective antipathetic to universal human rights and tainted with xenophobia. We would argue that there is a similar xenophobic undercurrent to the demand that the UK leave the EU. There are, of course, financial, economic and democratic arguments advanced in favour of Brexit. It is, however, very rare to find these arguments unconnected with the idea of the exceptionality, if not the outright superiority of this particular nation state compared with all others. The centre ground of the Brexit movement displays a fixation with protecting “our own borders” and being in charge of “our own laws;” the more excitable fringe obsesses about immigration and displays a barely concealed racism. The connected movements to repeal the HRA, in the process breaking the link between UK courts and European jurisprudence, and to leave the EU are exceptionalist, xenophobic and antipathetic to human rights. The prospect of their victory should strike fear in the hearts of all human rights defenders.

Furthermore, constitutional chaos, and especially the unplanned dissolution of a nation state, is not good for human rights or the rule of law upon which they depend. The linked demands for repeal of the HRA and Brexit could lead to just such constitutional chaos.

However, the main issue in Northern Ireland is that our peace process and the construction of a new, relatively peaceful society depend on a framework of human rights laws and institutions. It is not scaremongering to say that regression on human rights protections will materially threaten the successful continuance of the peace process in Northern Ireland.

In our view, therefore, a successful Brexit would lead to a “carnival of reaction” with the forces inimical to human rights in the ascendant and the peace process under threat. In practice, in this time and in this place, the exit of the UK from the EU would mean a huge blow to the state of human rights in general and in particular could lead to disaster in Northern Ireland.

An anti-Poverty Strategy for Northern Ireland

The Northern Ireland Anti-Poverty Network (NIAPN) and the Child Poverty Alliance held a conference on 5 April 2016 to discuss an anti poverty strategy for Northern Ireland that would include a definition of poverty and objective need. The conference also sought to highlight the impact of current policies on those currently experiencing poverty; explored different approaches to reducing poverty – including equality and human rights-based perspectives; and examined other potential strategies that could work in parallel to ensure a robust and effective anti-poverty strategy for Northern Ireland.

The conference started with an overview of the CAJ Judicial Review against the Northern Ireland Executive, Daniel Holder outlined the need for a new anti poverty strategy and not just a few current strategies cobbled together or ‘Lifetime Opportunities’ being dug out and readopted. The latter would not work for various reasons but mostly because it was written in a very different time, one of the opening paragraphs states;

The United Kingdom is a country of growing prosperity. The last decade has seen many more people in jobs thanks to record levels of employment...

Northern Ireland, like the rest of the UK has experienced a period of sustained economic growth in recent years. This is reflected in the continued growth in employment, and falls in numbers of unemployment (58% reduction between 1992 and 2005) which are among the largest decreases in the UK. Along with improvements in the economy, Northern Ireland has seen improvements in standards of education, health and housing.

Next a panel of academics discussed approaches to reducing poverty. Mike Tomlinson set out the definitions of absolute poverty and overall poverty, he was adamant that any anti poverty strategy first had to agree on a definition of poverty. There are definitions in the Irish and Welsh strategies that we can take learning from but the Poverty and Social Exclusion Project uses the following quite simple and straightforward definition;

Those whose lack of resources forces them to live below a publicly agreed minimum standard.

Paddy Hillyard discussed the high rate of child poverty in Northern Ireland. His solution to this problem is very simple, either increase the unit of resource going into poor families or reduce the unit of resource going out of those families. He also reminded us that Northern Ireland is not poor- we have seen a big surge in the private rented sector from 3% to 18% and it is now worth £3 billion. Northern Ireland ranks 3rd in the region for sales of top end cars, it has 96 high worth individuals and we have 41 Millionaires whose assets come to £3.1 Billion. Ann Marie Gray has been working with the Joseph Rowntree Foundation (JRF), they are developing a UK wide anti poverty strategy using clear evidence bases and it will be fully costed. They have defined poverty as; When a person’s resources (mainly their material resources) are not sufficient to meet their minimum needs (including social participation).

One of the recommendations that will be coming out of this strategy will be the need for childcare, advocating a single funding system for childcare based on the Danish model. That would include no family paying out more than 10% of their income on childcare. That has been costed by JRF at £7 Billion for the UK. Although not a cheap option it will be at the very heart of the strategy. The second panel session included discussion about how we can ensure that the voices of those experiencing poverty are heard and this included presentations from Goretti Horgan (NIAPN), Marie Cavanagh (Gingerbread) and Dessie Donnelly (PPR). The event was rounded off by a panel discussion including the Chief Commissioner of the Equality Commission, a Human Rights Commissioner and the NI Commissioner for Children and young People. A conference report of the day will be available soon and work is now ongoing to draw up a set of agreed principles that individuals and organisations can sign to push forward the anti poverty agenda immediately after the elections.

The Stormont House Agreement and the Gender Principles for dealing with the legacy of the past

On Friday 15th April, a delegation from the Belfast based Legacy Gender Integration Group briefed the Tom Lantos Human Rights Commission in Washington DC, on efforts to incorporate gender principles into post-conflict truth, justice, and reparations in Britain and Ireland.

The signing of the Good Friday Agreement in 1998 changed much at a political, legal and social level. However, in the intervening 18 years, the suffering of those whose human rights were violated by both State and Non State actors has remained an outstanding concern.

A fresh accord known as the Stormont House Agreement was reached in 2014, potentially providing victims and survivors with access to truth, justice and reparations. Further talks on implementing this latest phase

of the peace process are due to begin after elections to the Northern Ireland Assembly on the 5th May.

The briefing discussed existing mechanisms for dealing with the past and threats to the new proposals, such as the British government use of a national security veto and the overall absence of a gendered approach. The Legacy Gender Integration group believe application of a gendered lens can contribute to the effectiveness, quality and scope of the future legislation and processes, making them better for everyone involved. The Gendered Principles for Dealing with the Legacy of the Past document provides 10

recommendations for addressing

the gender gaps in victims' access to truth, justice, and reparations. The group was well received and there were many offers of support to help take forward the principles including using them as a learning tool for other countries such as Columbia. The group will be keeping the contacts made in Washington up to date with any progress made over the summer months and will be continuing to lobby the British and Irish Governments.

The legacy Gender Integration Group want to see a push to ensure that any Stormont House Agreement legacy process draws on international good practice such as that outlined by CEDAW and UN Resolution 1325 and its subsequent resolutions and are currently drafting implementation guidance on the gender principles. This guidance can be taken forward practically by policy makers, officials and those setting up the proposed mechanisms for dealing with the past.

The Gender principles and workshop report can be found on the CAJ website.



Women Speak Out on Community Planning



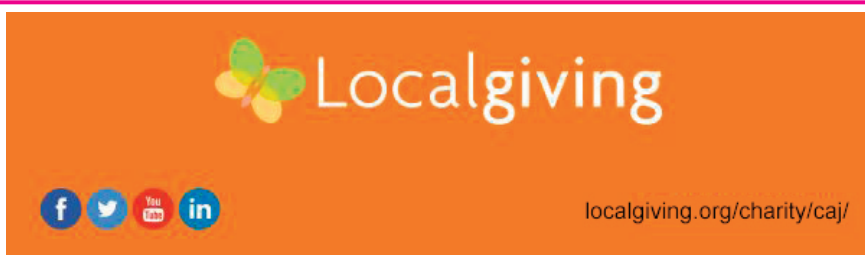
On Wednesday 27th April we launched our Women Speak Out on Community Planning report. The event was held at Belfast City Hall and sponsored by Belfast's Lord Mayor, Councillor Arder Carson.

With the re-structuring of local government, councils now have the new statutory duty of community planning. Community Planning aims to improve the effectiveness of public services in meeting people's needs, to support the development of local communities and to improve the quality of life for all. Therefore, it was important to us that women are not only aware of this new duty but that they are fully involved.

WRDA Women's Sector Lobbyist held a number of workshops across Northern Ireland to engage with local women and listen to their main concerns.

The research was then collated into a report highlighting the three key themes that emerged from the findings. The full report is available on the WRDA website.

The launch was a great success with a great turnout from local community groups, organisations and individual women and men interested in the process of Community Planning.



CAJ takes no funding from government so relies on the generosity of charitable foundations and the general public. This year is our 35th Anniversary and we are marking the occasion by asking people to donate £35 (at least!) to support our work.

If CAJ received £35 from 8 people, it would cover the cost for printing the newsletter Just News for one month.

Please consider a one off donation or, better still sign up for, a monthly Direct Debit. If you are a UK tax payer, please sign up through Local Giving and CAJ will receive an extra 20p per pound.

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Contd. from front page...

Particularly relevant to contemporary debates in Northern Ireland the Committee expressly links the denial of sexual and reproductive health to the denial of other fundamental rights. For examples, the Committee affirms that “lack of emergency obstetric care services or denial of abortion often leads to maternal mortality and morbidity, which in turn constitutes a violation of the right to life or security.” (para. 10)

The General Comment does not dwell solely in the land of generalities. It also concretely articulates the elements of state practice that deliver a right to sexual and reproductive health on the ground. These include adequate health care facilities that can deliver and support the full range of sexual and reproductive health needs as well as trained professionals who can provide expert services. In this context, the Committee affirms that the availability of essential medicines include “a wide range of contraceptive methods, such as condoms and emergency contraception, medicines for abortion and post-abortion care, and medicines, including generic medicines, for the prevention and treatment of sexually transmitted infections and HIV.” The refusal to provide services on the basis of conscience cannot be a basis for the outright denial of reproductive and sexual health by the state. Sexual and reproductive health services must be accessible (para. 16), affordable (para. 17), high-quality (21), and promote acceptability and tolerance (para. 20). The Committee acknowledges that both men and women exercise sexual and reproductive rights, but that women carry specific burdens and challenges by virtue of their reproductive capacities. Powerfully, the Committee holds that:

“The right of women to sexual and reproductive health is indispensable to their autonomy and their right to make meaningful decisions about their lives and health. Gender equality requires that the health needs of women, different from those of men, be taken into account and appropriate services provided for women in accordance with their life cycle” (para 25)

The General Comments then proceeds to articulate the very precise obligations of states and firmly underscores the positive obligations of states (including the obligation to protect). This important intervention by the ESCR Committee is timely, powerful and much needed. As restrictions to sexual and reproductive health proliferate strong human rights mandates and language is needed to counter the restrictions, denial and discrimination that pervade the lives of women in particular who need access to reproductive and sexual health. Governments must be held to their human rights treaty obligations including the human right of women and men to reproductive and sexual health.

Professor Fionnuala Ni Aolain

The full text is found on the website of the OHCHR
<http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx>

Largest NI political party uses Assembly minority rights veto to veto minority rights veto for local government due to reference to equality

You have read the above headline correctly. One of the key safeguards for decision making in the 11 new ‘supercouncils’ which opened their doors a year ago was the ‘call in’ mechanism contained in s41 of the Local Government (Northern Ireland) Act 2014. Last month in presenting the secondary regulations to the Assembly for a second time the Minister of Environment Mark H Durkan explained ‘call in’ was a “key mechanism for providing a protection for the interests of minority communities in council decision-making.” The provision includes, but is certainly not restricted to, the nationalist and unionist minorities in respective council areas.

The counterpart minority rights protection mechanism in the Northern Ireland Assembly is the ‘Petition of Concern’. Whilst there are examples of Petitions of Concern being used for this purpose, there are also plenty of examples of petitions being turned on their head and being deployed to block minority rights provisions in the Assembly. This includes recently votes on marriage equality for persons of minority sexual orientation, supported by the majority of MLAs, but defeated by a petition of concern from the DUP. On a previous occasion an attempt to amend the law to remove an obstacle to provision for caravan sites for the Irish Traveller community was also blocked by a petition of concern. Valid Petitions of Concern require votes to pass on a cross unionist-nationalist basis. Their misuse is compounded by there being no criteria whatsoever which have to be met to table a Petition of Concern, beyond 30 MLAs signing the Petition.

In terms of local government the ‘Call In’ mechanism provides for key decisions, when the decision has been ‘called in’ by 15% of representatives, to be reconsidered and only approved if passed by a ‘qualified majority’ of 80% of councillors. Unlike the Petition of Concern the primary legislation does at least set out some criteria, namely that the decision in question would ‘disproportionately affect adversely a section of inhabitants’ of the local government district. The merits of a “call in” have to be determined by a legal opinion. The problem is that the terminology of ‘disproportionately adversely affect’ neither draws on recognised concepts nor is not further elaborated on in the legislation. It was consequently subject to criticism by CAJ and the Environment Committee of the NI Assembly for lacking legal certainty. The Minister does however have power to introduce secondary legislation. The first attempt at such regulations was rejected in a February 2014 via a DUP petition of concern in the Assembly. At this stage the concerns were that a draft still lacked legal certainty and a qualified majority still would have been required regardless of the merit of the call in.

The secondary legislation was therefore redrafted and presented to the Assembly as the Local Government (Standing Orders) Regulations (Northern Ireland) 2016. These regulations tied the ‘call in’ to circumstances where a legal opinion indicates a risk. The decision is, among other matters, incompatible with the ECHR or the Council’s equality scheme insofar as it relates to the equality duty contained in s75(1) of the Northern Ireland Act 1998. This formulation would have provided a level of protection for minority rights at local government level. Whilst this position from the SDLP minister was supported by all other parties (SF, UUP, Alliance and SDLP itself), it was not supported by the DUP who tabled a Petition of Concern to block it. The DUP told the Assembly their position was in particular based on opposition to equality duties being part of the call in consideration, instead expressing a preference for the less legally certain concept of being ‘disproportionately adversely affected’ being maintained. It remains to be seen how the primary legislation will now be interpreted in practice without any regulations. If it is not interpreted as requiring at least some sort of objectively quantifiable discriminatory detriment on a section of the community it risks becoming an unqualified political veto with the potential to grind council-decision making to a halt. This is further evidence as to why safeguards on how power was to be exercised here were meant to be, and would be best provided for in the Northern Ireland Bill of Rights.

Civil Liberties Diary - March

2nd March

A report released by Stormont's Public Accounts Committee has prompted fears that Northern Ireland's education system is failing young people, particularly those in our most disadvantaged communities. Findings revealed that 2 in every 5 pupils leave school without adequate English and Maths skills, while an average of 372 a year fail to achieve any GCSEs. Critics have hit back, questioning the reliability of the data and pointing out that a steady, albeit slow improvement has been made in recent years.

3rd March

As many as 50 victims of historical abuse in Northern Ireland may have died before an inquiry on the matter has been drawn to a close, the Office of the First Minister and Deputy First Minister has heard. The inquiry, formally established in January 2013, was set up in order to investigate allegations of child sexual abuse which occurred in residential institutions over a 70 year period. Retired Judge and Head of the Inquiry Anthony Hart has stated that there was 'without doubt,' sexual abuse, recommending that compensation be paid to victims, many of whom have spoken about feelings of disappointment in the State.

10th March

Northern Ireland is set to welcome 60 more refugees in the following month, the second

group to be accepted. The preparation for the scheme is at an advanced stage, with refugees due to be settled in the North West. The figure (now 111) falls far short of the sum it is thought that Northern Ireland would be able to accept. Deputy First Minister Martin McGuinness has stressed a quality over quantity approach to resettlement, so as not to 'do a disservice to people who would arrive here in large numbers.'

11th March

The cost of dealing with our fractured society has been put at an estimate of £834 million, an Ulster University Report has revealed. Provision of Policing and Justice is responsible for over half the bill (totalling £312 – 550 million more than the U.K average,) and health, schooling and the provision of leisure significantly increasing the total also. Alliance MLA Stephen Farry has called for urgent action to address the problems caused by our divisions.

16th March

The SDLP's Margaret Ritchie has branded Chancellor George Osborne's proposed cuts to Personal Independence Payment 'a flagrant attack on disabled people.' The MP, who denounced austerity and deemed the cuts 'unjustifiable,' has argued that they will worsen the lives of the disabled community and drive people with disabilities further into poverty.

17th March

The PSNI's efforts to combat hate crime in Northern Ireland have been praised during a multi-seminar agency, attended by the Probation Board and various campaign groups who work alongside migrants. The meeting saw a unanimous denunciation of the scourge of hate crime, as well as recognition of the importance of pooling resources in order to fully tackle the issue. Eva Grosman, of the Unite against Hate Campaign lauded the PSNI for leading the way in 'addressing and improving response to hate crime across NI.'

Compiled by Helen Byrne from various newspapers

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Correspondence should be addressed to the Editor, **Fionnuala Ní Aoláin**, CAJ Ltd.

1st Floor, Community House
Citylink Business Park
6A Albert Street
BT12 4HQ

Phone: (028) 9031 6000

Text Phone: 077 0348 6949

Fax: (028) 9031 4583

Email: info@caj.org.uk

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