

Dealing with the Past in Northern Ireland: Implementing the Stormont House Agreement

A joint conference organised by Amnesty International, the Committee on the Administration of Justice (CAJ), the Institute of Conflict Transformation and Social Justice Queens University Belfast (QUB) and the Transitional Justice Institute Ulster University took place on Monday 18 May 2015 in the Conor Lecture Theatre, Ulster University, Belfast.



This conference was designed to let interested parties have input into and discussion on a model implementation bill drafted by representatives from CAJ, individual academics and visiting scholars from the Queen's University of Belfast and the Ulster University. This group also drew on expertise from Jeremy Hill (former legal advisor to the Eames Bradley Commission) and Daniel Greenberg a barrister specialising in legislation. More details can be found on page four.

David Ford the Minister of Justice for Northern Ireland opened the conference, he welcomed the work that had been done by the drafting group and set out the legislative timeframe for the proposals in the Stormont House Agreement.

Kate Allen, Director of Amnesty International UK then set out the purpose of the day and the reason why a model implementation bill was an important priority for those involved. Kate encouraged those in attendance to ask questions and start a discussion on the way forward for the proposals in this bill.

The first panel was on the Historical Investigations Unit (HIU) and Inquests.

The chair for this panel was Kate Allen. The first speaker, Patrick Corrigan, Programme Director NI Amnesty International UK laid out the background for the audience on past failures to investigate human rights abuses in Northern Ireland, the proposals in the Stormont House Agreement and the obstacles on dealing with the past such as funding.

Daniel Holder, Deputy Director of CAJ outlined three main points in his presentation; first, the investigative remit of the HIU; second, the independence of the HIU; and third, disclosure and police powers of the HIU. Daniel warned how important the drafting stage of the legislation will be as often things can find their way into the legislation that are not in the initial agreement such as how 'good relations' made its way into Section 75 (2) of the NI Act 1998 although not included in the Good Friday Agreement.

Fiona Doherty QC presented in detail on inquests, specifically speaking to article 31 of the Stormont House Agreement. Article 31 outlines that the new process 'should be victim centred,' Fiona touched on the challenges families have faced over the last 17 years such as the disclosure of material. **contd...**

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The terms of the Stormont House Agreement recognises that, 'European judgments have demonstrated that the legacy inquest process is not providing access to a sufficiently effective investigation within an acceptable timeframe.' Fiona detailed how this could be improved and the need for compliance with international human rights mechanisms.



David Ford, MLA Minister of Justice; © by Stan Nikolov

The second Panel; The Independent Commission on Information Retrieval (ICIR) was chaired by Mary McCallan, Advocacy Officer WAVE Trauma Centre. Professor Louise Mallinder, Transitional Justice Institute, Ulster University started the session by detailing what approach was taken by the drafting group. First, they decided to work within the language and concepts already contained in the Stormont House Agreement; second, refraining from articulating provisions that are contrary to the agreement; and third providing more substantive detail on how the processes should operate (in places this did take them beyond the wording of the agreement). Professor Mallinder also spoke on the duration of the ICIR, composition and appointments to the ICIR, independence, engagement with victims and information retrieval including the possibility for penalties and finally the need to adhere to human rights principles.

Professor Kieran McEvoy, School of Law, Queen's University Belfast presented on the background of the ICIR and the 'piece meal approach' to dealing with the past that we have seen over the last 17 years. There were 140 pages in Eames Bradley Commission on dealing with the past. In the Haass/O'Sullivan the content went to 19 pages and in the Stormont House Agreement we have a mere five pages. Professor McEvoy also touched on the rule of law and human rights framework that is needed for the ICIR to work. Both speakers agreed that there should be a gender balance in the management and staffing of the institution.

The last panel of the day was the Oral History Archive and Implementation and Reconciliation Group (IRG) chaired by Brian Gormally, Director of CAJ. Dr Anna Bryson, Research Fellow, Queen's University Belfast talked about the opportunities we now have in shaping this institution, applying a gender dimension, rural and urban perspectives, acknowledging and addressing victims and survivors suffering, facilitating the pursuit of justice and information gathering so we can learn from the past harms. Dr Bryson warned that this cannot be a time bound process as people will engage at different times, there needs to be a drawing together of information we already have to add to what gets gathered in the future. She also concluded that attention needs to be paid to where such histories will be stored, the remit for the use of the information and how the institutions will work together.

Professor Brandon Hamber, Director, International Conflict Research Institute (INCORE) Ulster University addressed six areas. First, overseeing role and selection of members of the IRG; second, the themes and process of delivery including timing; third, the evidence gathered and selecting themes, fourthly promoting reconciliation as an aim of the IRG, fifthly the need to acknowledge the IRGs value and limits and lastly to what sort of co-operation by the governments with the IRG will be had.

Jeremy Hill, member of drafting group and former legal advisor to the Eames Bradley Commission asked the audience if they thought the IRG should be covered in legislation. In the Stormont House Agreement it was not envisaged that it would be but the drafting group agreed it needs to have a statutory basis as it would give it more weight and force and that there is a strong case for including it in any legislation. The

Stormont House Agreement also doesn't say how the Oral History Archive or the ICIR will be overseen as such. Whether this is intended or not, Mr Hill and the drafting group agree that the IRG's task is mainly to oversee the effectiveness of the processes, rather than have a more controlling relationship over those two particular bodies. Mr Hill underscores that the themes that will emerge from the IRG will be important to the process, and the timing and decision making on thematic content are important issues. Mr Hill stated:

"The other bodies like the HIU exist for five years and yet the report on themes is commissioned after five years. The natural conclusion is – and common sense demands – that actually the IRG should be preparing its evidence base on themes and patterns from the moment of its establishment, preparing the ground for the commissioning of the actual report which happens after 5 years." I think it is important – and the Stormont House Agreement implies this – that, even if the IRG takes the decision on themes, that in practice they are the result of a collaborative and consultative process. Hence perhaps the other legacy mechanisms have the right to comment on the level of cooperation received."

Reflections on the day were provided by the appointed rapporteur Susan McKay, a writer and journalist specialising in Irish and Northern Irish politics and social issues. Susan reminded us of the discussions throughout the day, the formal presentations and input from the audience. She underscored that the time to have the greatest influence on the deliberations on dealing with the past is now. The conference ended on a positive note by the rapporteur views that all resent can work together to make sure that the lessons are learned and making use of collective experience to build concrete mechanisms for dealing with the past in Northern Ireland.



Susan McKay, Rapporteur; © by Stan Nikolov

The Model Implementation Bill for the Stormont House Agreement can be found on the CAJ website and is supported by explanatory notes. CAJ are happy to take any comments on the model implementation bill, a full conference report will be available soon.



(from left to right)

Patrick Corrigan of Amnesty International UK, Rory O'Connell from TJI, Ulster University, MLA Minister of Justice David Ford, Kate Allen of Amnesty International UK, Kieran McEvoy from School of Law QUB and Brian Gormally of CAJ

A Model Implementation Bill for the Stormont House Agreement

CAJ, academics and individual experts have been working since the New Year on drafting a model implementation bill for the dealing with the past aspects of the Stormont House Agreement. The purpose of drafting a Model Bill was to explore in the necessary level of detail how the past-related elements of the Stormont House Agreement could be implemented in practice, in a way that would be human rights compliant and answer the needs of victims and broader society. It was decided to put forward practical proposals, within the parameters of the Agreement, rather than producing what we would think of as a perfect model. The idea was to influence the official drafting of legislation while reflecting a human rights based approach and the perspective of civil society.

This project has developed from a partnership between civil society and academia. CAJ has been working on and litigating dealing with the past issues for many years. For a number of years, a Queen's University School of Law and Ulster University Transitional Justice Institute project (funded by the Arts and Humanities Research Council) has been providing technical and legal information to civil society and politicians on a range of dealing with the past related themes. Building on that work, in mid-2014 CAJ and the team from Queen's and Ulster University began collaborating on a joint project on dealing with the past supported by the QUB Business Alliance Fund and the QUB Collaborative Development Fund. The first output from this collaboration was a report detailing the limitations of existing dealing with the past mechanisms – the Apparatus of Impunity launched at Queen's in January 2015. The second major planned output is a 'Dealing with the Past' Bill.

In recent months it has become apparent that the government envisages a very tight timetable for legislating on the past and that the relevant Bill will be presented at Westminster rather than Stormont. In order that our work might feed into those deliberations, the core group asked other expert colleagues to collaborate and a drafting committee has been working intently on the production of a Model Bill.

Those involved in the drafting committee are: Professor Kieran McEvoy (QUB), Daniel Holder (CAJ), Professor Louise Mallinder (TJI, UU), Brian Gormally (CAJ), Jeremy Hill (Visiting Fellow, TJI), Gemma McKeown (CAJ), Anna Bryson (QUB) and Daniel Greenberg (Barrister specialising in legislation).

The draft Model Bill and Explanatory Notes were presented at a major conference on 18th May, reported on elsewhere in this edition. At this stage, these deal with the Historical Investigations Unit, the Independent Commission for Information Retrieval and some general issues of definition and interpretation. We are strongly of the opinion that elements of legislation are also necessary for the Implementation and Reconciliation Group and the Oral History Archive but we have not yet reached the stage of being able to present a formal draft on these matters. We welcome the input of those speaking at and attending the conference and we will take account of their views in preparing draft model legislation in the coming weeks.

However, in recent statements, the Secretary of State, Theresa Villiers has hinted that the stalemate on so-called welfare reform might put the process of legislating for dealing with the past at risk. In response, Brian Gormally, CAJ's Director, said:

"In recent interviews, Secretary of State Villiers has implicitly linked welfare reform and dealing with the past. If this link were made explicit, if the suffering of victims of the conflict were to be held hostage until cuts were imposed on the most disadvantaged in our society, many of them also victims, this would be a moral outrage."

"Victims of the conflict need truth and justice and the Stormont House agreement on dealing with the past based on human rights standards, represents the best hope in a generation of delivering on that. To use victims to blackmail local politicians into falling in line with the UK Government's callous policy on welfare would mark a new low in dirty politics."

Gender and the Stormont House Agreement: Developing Gender Principles for Legislation and Implementation

The moment of opportunity presented by Stormont House Agreement has motivated civil society in Northern Ireland to engage proactively and constructively with the implementation of the Agreement, such as the May 18, 2015 conference between academic and human rights organisations on 'Dealing with the Past in Northern Ireland: Implementing the Stormont House Agreement', and the self-constituted 'drafting group' drawing on the same academic and non-governmental organisations to draft the 'Stormont House Agreement Model Implementation Bill' in order to inform the official legislation which is currently under consultation.

Nevertheless, all of this official and non-governmental activity concerning the SHA has, to date, raised concerns about replicating the same gendered blindspots and exclusions of earlier initiatives to deal with the past. Initiatives to deal with the past in Northern Ireland have been characterised by an absence of any official recognition of gender as a structural element of the conflict, or even as a relevant consideration, in crafting state responses to dealing with the past. Reasons for the exclusion of women and broader gender perspectives of conflict are typically attributed to overly-narrow understanding of 'harms' that result from conflict, that focuses in particular on deaths, but not, for example, to the ongoing socioeconomic and relational harms experienced by those left behind. Further, decision-making around dealing with the past typically prioritizes the 'primary' conflict and primary conflict protagonists, to the exclusion of other agendas and actors. The absence of a gender dimension is typically also attributed to an excessively legalistic focus on individual deaths resulting from the conflict and individual perpetrators, which in turn generates a series of other shortcomings and absences in the official process (most notably in the Northern Irish context, the plight of the living injured and the ongoing socioeconomic consequences of the conflict experienced daily at the community level).

The absence of a sustained gender dimension to official efforts to deal with the past reflects and echoes silos within civil society in the jurisdiction. Consequently, although well-intentioned, the civil society actors working proactively to shape Stormont House Agreement legislation does not include gender-expertise and has not identified gender as a priority area of concern in its work. Against this backdrop of continued de-prioritisation of gender in official and non-governmental work to shape legislation and implementation of SHA, there is an urgent and immediate risk of the SHA replicating and exacerbating the marginalisation of women and gender from dealing with the past in Northern Ireland.

In response to these shortcomings, gaps and silences around gender in current official and non-governmental efforts to support legislation and implementation of the Stormont House Agreement, an informal network of women with gender expertise drawn from civil society organisations in the jurisdiction (Falls Community Council, British-Irish Rights Watch, Committee on the Administration of Justice, WAVE Trauma Centre, Relatives for Justice) and academics from Ulster University came together in April 2015 to work for the integration of gender into SHA legislation and implementation. The informal network is now working effectively to develop a set of 'Principles for Application of a Gender Lens in SHA Legislation and Implementation Policies and Practices', accompanied by practical examples of how an understanding and focus on gender can improve the overall process to deal with the past.

Dr Catherine O'Rourke, Transitional Justice Institute

Women's Power to Stop War: Centenary Conference of the Women's International League for Peace and Freedom, April 27-29th

The Women's Power to Stop War Conference that took place in The Hague in April, this year marked the 100th anniversary of the 1915 Hague International Congress of Women which established the Women's International League for Peace and Freedom (WILPF). The centenary conference was not only a celebration of the anniversary of the stand for peace made by a group of courageous women during World War I. It is a coming together of women activists from around the globe to continue to work towards an end to all war and the development of a multilateral system that can sustain that peace and equality.

The 1915 Conference brought together over 1,300 women from twelve different countries, to collectively respond to the events of World War I. Through a resolution adopted at the Congress, they expressed a stand in favour of peace and a transformation to modes of international relations away from options centred on masculinist belligerence. Crossing the front-lines of World War I, some even travelling by fishing boats because ferry services had ceased operating in dangerous seas, almost 1,200 women from 12 neutral and war-engaged countries gathered in The Hague.

In tribute to its important roots in the women's collective action for permanent peace in 1915, the Centenary Conference also served as a powerful conceptual and political challenge to the dominant contemporary international approach to peacemaking of crisis-driven peace talks and elite negotiations held behind closed doors. "We have the power to stop war and turn our upside world upright," Nobel Laureate Leymah Gbowee told the over 1,000 peace activists assembled for the opening panel of the Women's Power to Stop War conference. Her opening address posed an important challenge to those assembled: in a world primarily led by men and where military spending is prioritized, can women unite globally to advocate for peace? In the contemporary context, this question is perhaps more complex than amongst the women gathered of 1915. The increased internationalization and diversification of WILPF membership in the intervening years meant that internal tensions and divisions amongst women also surfaced during the conference. Different feminist positions were articulated at the conference between, for example, Yemeni women and their position on Saudi Arabian drone strikes in their country, or between different sides and approaches to the ongoing Syrian conflict, and between indigenous and Indian women in Nagaland.

A key point of reflection at the conference was the change in the nature of conflict since 1915, from major inter-state conflicts such as WW1 to widespread long-running conflicts of attrition involving ethnic tensions and an overarching global 'war on terror', without either temporal or geographic boundaries. The conference, through its scrutiny of militarization and, in particular the arms trade, demonstrated the staggering complicity of ostensibly 'peaceful' countries in the west with wars and conflict globally. A point made frequently throughout the conference was the structural incapacity of the multilateral system in challenging this growing militarization, in particular given the economic interest in war of the five permanent members of the UN Security Council, as five of the six largest arms exporting countries in the world.

But the conference also discussed the manifold important locally and globally targeted action by women to challenge war and militarization. As one example, I leave the final words to the Pakistani women who recounted challenging their own government's growing capacity to manufacture military tanks. They asked, quite simply, 'why don't you build school buses?'

Dr Catherine O'Rourke, Transitional Justice Institute

Tories Win and Threaten Human Rights Act

The unexpected win by the Conservative Party of an absolute majority in the UK House of Commons will lead to an immediate threat to human rights. It was announced that the intention to repeal the Human Rights Act, which incorporated the European Convention on Human Rights into domestic law, with a vague “British Bill of Rights” would be included in the Queen’s Speech.

On the day she was appointed, CAJ wrote to the Secretary of State protesting against this move. The letter included the following arguments:

“As you will be aware, unless its provisions are simultaneously re-introduced for this jurisdiction, repealing the Human Rights Act insofar as it has effect in Northern Ireland would constitute a flagrant breach of the Belfast/Good Friday Agreement.

“The Agreement, in addition to being approved by referendum, was incorporated as a treaty between the UK and Ireland and lodged with the UN (UK Treaty Series no. 50 Cm 4705). Article 2 of the treaty binds the UK to implement provisions of the annexed Multi-Party Agreement which correspond to its competency. Paragraph 2 of the Rights, Safeguards and Equality of Opportunity section of this Agreement states:

“The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency.

“This commitment was given legislative effect through the HRA 1998. The Agreement also commits to safeguards to ensure the Northern Ireland Assembly or public authorities can infringe the ECHR. You will also be aware in relation to other key provisions of the peace settlement the HRA 1998 is, for example, also key to the framework for the human rights compliance of policing in Northern Ireland. One of the key functions of the Northern Ireland Policing Board, as set out in s3(3)(b)(ii) of the Policing (Northern Ireland) Act 1998, is to monitor compliance with the Human Rights Act 1998. The PSNI Code of Ethics, provided for under s52 of the same Act is also designed around the framework of the ECHR as provided for by the HRA 1998.

“Given this CAJ would ask for urgent clarification that the Government does not plan to breach the Belfast/Good Friday Agreement through a repeal of the HRA 1998 in relation to Northern Ireland in the above manner.”

Human rights groups based in Britain have also protested against the repeal of the HRA. CAJ will be speaking at a meeting organised by the Human Rights Consortium Scotland on 1st June in Glasgow in defence of the Human Rights Act. CAJ has also signed up to a “pledge” put forward by the British Institute of Human Rights, Liberty and Amnesty International UK. The pledge reads:

“We believe in fundamental human rights and freedoms – shared values that protect every member of the human family and the society we seek to build together. Human rights underpin our democracy, hold Governments to account and require that everyone’s dignity is equally respected. We pledge to oppose any Government plans to repeal our Human Rights Act, in so doing we stand firm on guaranteeing universal human rights protections for generations to come.”

Civil Liberties Diary - April 2015

2 April

The Commissioner for Public Appointments, John Keane, will step down from his post in July after four years in office. His resignation is motivated by principle, based on the lack of reform in the system for selecting quango members, nearly a year after he published a report on under-representation and a lack of diversity in public appointments.

3 April

A report commissioned by the Community Relations Council found that Catholics and Protestants are living in 'mixed' housing for financial reasons, rather than a commitment to integration. The study examined Ravenhill, Fortwilliam and Cliftondene/Deerpark, three increasingly mixed areas across the city.

7 April

Finance Minister Simon Hamilton has reported that failure to implement welfare reform will cost the Stormont executive more than £1.2 billion over the next four years. This amount includes both the fines for not implementing welfare reform as well as additional capital costs to develop an IT system tailored for Northern Ireland.

14 April

According to a report by the Department of Education, the number of children who are neither Catholic nor Protestant in Northern Irish schools is at an all-time high. There are 7,755 more 'other' pupils in schools compared to six years ago.

15 April

Northern Ireland Policing Board members have described the PSNI as being 'male, pale and grey', noting that less than 30% of PSNI officers are female. The number of women in the PSNI is set to decrease even further due to the low rate of success for new female applicants. The most recent recruitment campaign, for example, accepted 67 women within 353 posts.

17 April

Justice Minister David Ford has recommended that abortion be legal in cases of fatal fetal abnormality but not for cases of rape or incest. His recommendations follow a public consultation on abortion and would be the first change to Northern Ireland's abortion legislation in over 100 years.

21 April

Paramedics in Northern Ireland will wear full PSNI riot gear and drive a bulletproof PSNI Land Rover this summer. The initiative is part of a broader public order training programme which will be rolled out across the UK, beginning in Northern Ireland and London.

24 April

The Kingsmill Inquest has been delayed due to the lack of a coroner to hear the inquest. As there are dozens of conflict-related inquests which have been delayed due to a lack of money to investigate or a lack of coroners to hear the inquest, victims families are to launch a High Court judicial review of the alleged 'deliberate' failure of the authorities in Northern Ireland to properly resource an inquest into

the massacre. There is currently only one coroner available to hear conflict-related inquests.

27 April

DUP Health Minister Jim Wells is to include a directive within a new adoption and children's bill, stating that children are best served 'by being adopted by a man and woman'. The bill, currently being prepared, is scheduled to go out for public consultation later this year.

28 April

A proposal to introduce same-sex marriage in Northern Ireland was rejected for the fourth time by the Stormont Assembly. The bill, put forward by Sinn Féin, was defeated by a vote of 49 to 47, the closest vote to date.

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Just News

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