

How many negotiation issues could be dealt with by the NI Bill of Rights?

Though currently suspended during the general election campaign, the political parties and the two governments are in a process of negotiating the re-establishment of the Stormont institutions. CAJ has published two Discussion Notes so far on issues that have been reportedly raised during the negotiations. What follows is an edited version of one on the possible contribution of a Bill of Rights.

Next year will mark 20 years since the Belfast/Good Friday Agreement (BGFA) mandated a European Convention on Human Rights Plus Bill of Rights to reflect the ‘particular circumstances of Northern Ireland’ and 10 years since the Human Rights Commission delivered its final Belfast Good Friday Agreement (BGFA) mandated advice as to its content.

The NI Bill of Rights remains one of the most significant pieces of unfinished business of the Agreement; what this article explores is the range of some of the other outstanding and new crisis issues that could be dealt with through the vehicle of the Bill of Rights. Such a process could take the Bill of Rights as it stands in the Advice given by the Human Rights Commission or also consider how this advice might be updated and augmented to reflect changed political circumstances.

Impact of BREXIT – a new ‘particular circumstance’

The particular circumstances of Northern Ireland have been changed by the EU referendum. UK and Irish EU membership, and the exercise of European treaty rights, were a given at the time of the BGFA. If this had not been the case matters such as the freedom of movement and concurrent entitlements to reside, work, study etc throughout the Common Travel Area would have been core negotiation subjects at the time. One area where the existing Bill of Rights would have provided significant protections in the context of BREXIT was in the right enshrining the BGFA provisions on British and Irish citizenship. The Commission recommended that the Bill of Rights would ensure:

The right of the people of Northern Ireland to hold *British or Irish citizenship or both* in accordance with the laws governing the exercise of this right, *with no detriment or differential treatment of any kind*. This right would not be affected by any future change in the status of Northern Ireland [emphasis added, p41 NIHRC Advice].

A ‘hard’ BREXIT without any special dispensation for NI by definition already offends this provision given persons holding only British citizenship will no longer be able to exercise EU-treaty rights, to for example, travel and work elsewhere in the EU. Going forward, this provision of the Bill of Rights would prevent the post-BREXIT legal framework obliging the ‘people of Northern Ireland’ to have to rely on being British citizens to access entitlements in NI, once entitlement provisions for Irish and other EU nationals founded in treaty-based rights cease to have effect. Essentially this provision would require the replication and sustainment of such entitlements within the legal framework insofar as they relate to Irish and British citizens.

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A second example of where a Bill of Rights could address a pressing BREXIT issue relates to rights of freedom of movement within the Common Travel Area (CTA). At present the pre-BREXIT Human Rights Commission advice does not address this matter. However, such a measure, essentially underpinning the existing provisions in UK immigration law preventing passport controls within the CTA, could be incorporated within the Bill of Rights in the post-Brexit context. The Commission's advice could be augmented to add a provision guaranteeing freedom of movement within the Common Travel Area and providing that journeys within the CTA cannot be subject to passport control.

Flags and identity

A framework to deal with the issues currently being dealt with by the Stormont House Agreement mandated Commission on Flags, Identity, Culture & Tradition in relation to national identity expressions by public authorities was already included within the BGFA; as one of two rights explicitly set out for consideration in the Bill of Rights. The BGFA provided for the Bill of Rights to consider "the formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland". The Commission accordingly recommended that this was incorporated into the Bill of Rights as a statutory duty with a limitation clause to ensure the provision is read compatibly with other rights, including those of minority ethnic communities and other protected groups as follows:

Public authorities must fully respect, on the basis of equality of treatment, the identity and ethos of both main communities in Northern Ireland. No one relying on this provision may do so in a manner inconsistent with the rights and freedoms of others.

Equality legislation and duties

The second provision of the BGFA explicitly mandated consideration within the Bill of Rights related to anti-discrimination legislation on a broad range of grounds seeking "a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors."

At present NI anti-discrimination legislation remains fragmented and piecemeal, with significant gaps and threats in existing protections. Such matters could be dealt with in legislation further to the Bill of Rights.

Marriage equality

The Bill of Rights could deal with the issue of LGB marriage equality. The 2008 advice provided for a right to enter into a civil partnership, which reflected the prevailing legal framework at the time; this could be updated to provide for marriage equality.

The right of women to full and equal political participation

The BGFA affirms the right of women to full and equal political participation but no mechanisms have been introduced to progress this goal. On the contrary the implementation of the framework of UN Security Council Resolution 1325, which would have provided a framework designed for post-conflict societies has been blocked in NI. The Bill of Rights was to have incorporated the following statutory duty to progress this BGFA goal:

Public authorities must take effective measures to facilitate the full and equal participation of women in political and public life, including, where appropriate, the use of temporary special measures [NIHRC, p36].

Conflict-related convictions

The Fresh Start Agreement tackling paramilitarism action plan, and associated reports, have recommended removing exemptions in the current anti-discrimination law framework that essentially permit discrimination against persons with conflict-related convictions. The Bill of Rights was to deal with this issue – the Commission’s advice providing for ‘irrelevant criminal record’ to be explicitly added as a non-discrimination ground.

Language rights

Whilst the main Agreement-based provisions are the duty for an Irish Language Act contained in the St Andrews Agreement, and the two strategies for Irish and Ulster Scots legislated for (but unimplemented) in the same instrument, there were also provisions in the Bill of Rights. This included provisions not to be discriminated against on grounds of language. Also recommended was a duty to act compatibly with the European Charter for Regional or Minority Languages, which would make the Charter’s provisions, which are often ignored, into a legally binding minimum floor for public authorities.

Non-discrimination and the allocation of resources on the basis of objective need

The (unimplemented) duty to adopt an anti-poverty strategy on the basis of objective need was legislated for further to the St Andrews Agreement. More broadly, the non-discrimination and equalities framework of the Bill of Rights, coupled with the inclusion in the Bill of Rights of a range of socio-economic rights (e.g. rights to housing, social security etc), would provide a framework to assist in countering abuses of power in the allocation of resources in the NI context.

As the Bill of Rights would be binding on Westminster as well as Stormont measures, its provisions also provide a framework to challenge measures such as the new ‘two child rule’ in child benefit, given its discriminatory impact in NI and the Institute of Fiscal Studies’ view that the measure will become a major driver of child poverty here.

Quilt for Beijing on display for International Women’s Day

On International Women’s Day the office of the Women’s Resource and Development Agency was a hive of activity as we threw our doors open and brewed our best coffee for an open house event. The goal was to ensure that everyone had the opportunity to connect with all that is going on in the women’s sector and all of the opportunities that exist to be a part of this ongoing movement for women’s rights and equality.

Taking pride of place at the centre of our meeting room was the ‘Quilt for Beijing’ produced by women with the support of CAJ to mark the 4th UN World Conference on Women in Beijing in 1995. This conference proved to be a hugely significant milestone in the development of women’s rights internationally with the production of the Beijing Platform for Action which is still the key mechanism for establishing a gender approach to securing human rights protections worldwide.

Now 22 years old, the quilt is remarkably well kept and it’s imagery and messages drew the attention of everyone who attended on International Women’s Day. The issues raised are as relevant as they were 2 decades ago – women in peacebuilding, international solidarity with women facing extreme poverty and oppression, the marginalisation of traveller women, equality for LGB&T women, tackling violence against women and demanding social and economic justice for all. While many of the groups who contributed to the quilt are no longer in existence, their legacy in their communities lives on. Some of the groups who are still working away joined us at the open house or at other events to mark International Women’s Day 2017 – Women’s Aid, Falls Women’s Centre, CAJ, Amnesty International and the Women’s Centre Derry for example, are among the many organisations still fighting under the banner that ‘Women’s Right are Human Rights!’

Kellie Turtle, WRDA

Proposing a solution to the “national security veto” in legacy matters

In April, the group that had drafted the “Model Bill” for implementation of the Stormont House Agreement proposals on dealing with the past published its suggestions. These proposals are designed to provide a balance between any risks involved in divulging information after the investigation of conflict-related deaths and the right of families to the truth. These documents had been sent to the UK and Irish Governments almost a year before but the group felt that it was now time they were published. Professor Kieran McEvoy, in a letter of invitation to the seminar on 4th April launching the proposals, described the process as follows.

For a number of years a group of academics at Queens and Ulster University, representatives from human rights NGOs and individual experts have been working on a range of dealing with the past related matters. That work has included providing detailed policy reports and commentary on various aspects of the dealing with the past debate including publishing (in 2015) a ‘Model Bill’ and related explanatory commentary – our attempt to give legislative expression to the past related components of the Stormont House Agreement (SHA).

Throughout the process, our work has been designed to help civil society organisations, policy makers and politicians from across the spectrum to navigate what are often complex legal and political challenges.

We were deeply disappointed when the Fresh Start negotiations which concluded in November 2015 failed to reach consensus on how to implement the SHA past-related mechanisms.

However, together with a number of NGOs who work very closely with families directly affected by the conflict, we resolved to continue to try to help overcome the remaining obstacles. In particular, given the political focus on questions relating to the proposed redaction of sensitive information from reports going to affected families on the grounds of national security, we concentrated our energies on these and related matters.

To that end, representatives from the Committee on the Administration of Justice, the Pat Finucane Centre, Relatives for Justice, and Rights Watch UK worked intensively with academic colleagues and myself for a number of months last year in developing and refining a proposed model for dealing with the redaction of sensitive information, a set of principles which should underpin the design and implementation of the proposed mechanism, and the criteria which should inform any decisions on redactions.

These documents were passed to the UK and Irish Governments last year but were not made public. We understand that the UK Government has produced a document on national security which has failed to lead to agreement. We now think it right to put our own proposals into the public domain.

The full text of the two documents involved can be found on the CAJ website (<http://www.caj.org.uk/contents/1475> and <http://www.caj.org.uk/contents/1474>) but the basic concept is to have a judicial mechanism to appeal any decision to redact information on security grounds and a clear set of criteria that should be used to make the decisions.

The appeal mechanism would involve the Director of the Historical Investigations Unit making the initial decision on whether s/he felt that any redactions should be made in the information that would be given to families at the conclusion of an investigation.

If s/he was so minded, the families would be informed and would have the right to appeal. At the same time, the Secretary of State would be informed if the Director intended to release any “sensitive” material and he or she would have the right to appeal.

The appeal process would involve one or more judges deciding – on the substantive issues not, as in a judicial review, just on the process – whether any redactions were justified or, conversely, whether sensitive information should be released. Families could be legally represented in such a process by Independent Advocates, chosen by them from a panel of security-cleared lawyers. Unlike the “Special Advocates” that operate in closed material proceedings of other kinds, these would be chosen by the families and able to communicate the gist of the issues considered in the closed hearings.

The criteria for justified redaction of information would be carefully defined. The first element would be a general presumption of disclosure of all relevant information. The second would be that, in all cases where wrongdoing was identified, sufficient information should be provided that would enable the prevention of recurrence. This is further defined in the documentation and would be regarded as a minimum level of disclosure.

The third criterion would be the Article 2 duty to prevent a real and immediate threat to the life of an identified individual or individuals from the criminal acts of a third party. The next criterion would be the Article 3 duty to similarly prevent serious harm to any person. After that, the only remaining criterion would be the reasonable interest in the protection of operational methods of the security services including the police.

However, those methods would have to be, according to recent jurisprudence, both in contemporary use and fully legitimate i.e. both lawful and proper.

Together, these proposals make a reasonable compromise between the UK Government’s demand for a national security veto over information and the right of victims to truth. In our view, they go as far as it is possible and yet remain human rights compliant. It remains to be seen whether the parties and governments will accept them.

CAJ vacancy: Solicitor (Maternity Cover)

As legal officer at CAJ, a leading non-governmental human rights organisation, you will work on a wide range of human rights matters. This will include providing advice and assistance in relation to human rights violations, in particular those arising from the conflict in Northern Ireland, public interest litigation and contributing to CAJ’s policy and research work.

Please apply to liz@caj.org.uk for job description, person specification and application form. Completed application forms should be returned by 30th May; interviews of shortlisted applicants will take place on 8th June.

Salary will be commensurate with experience. Secondment or service level agreement will be considered. This position will be for at least 6 months and up to 12 months covering maternity leave.

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Solidarity with Civil Society in Hungary

We publish below extracts from a request from FIDH (International Federation for Human Rights) to support a civil society statement on the situation on Hungary. CAJ is a full member of FIDH and was happy to sign the statement.

Hungarian civil society has been targeted by the government for several years now through smear campaigns, politically motivated audits, administrative and criminal procedures. Members of the governing party have also and repeatedly expressed their opinion that certain NGOs - namely those active in the defence of the rule of law and human rights and critical of the government's actions - must be "swept out" of the country. These NGOs have been consistently accused of acting as "agents serving foreign political interests" in Hungary and "inciting illegal migration to Hungary as well as profiting from the migration business".

These attacks, unprecedented in an EU country, took place in a wider context of continuing degradation of the situation of the rule of law and human rights in Hungary over the past seven years since PM Viktor Orban first came into power in April 2010. Attacks against civil society have intensified in recent months, culminating in the proposition of a draft bill "on the transparency of organisations receiving foreign funding", which could force NGOs receiving funding from abroad to register as "civic organisations receiving foreign funds", thereby stigmatising them and obstructing their work.

We, along with our Hungarian partners, the Hungarian Civil Liberties Union (HCLU) and the Hungarian Helsinki Committee (HHC) and many other civil society organisations in Hungary and across Europe, have signed the statement written by Civil Society Europe, available at: <https://civilsocietyeurope.eu/who-we-are/campaigns/>. This is the text of the statement:

Statement to Hungarian people and civil society organisations – we stand in solidarity with you!

We, representatives of European civil society, hereby express our solidarity with the Hungarian NGOs who were most recently targeted by the bill on the "transparency of organisations receiving foreign funds". At the same time we wish to express our deepest support for the people who have taken the streets of Budapest to protest against this renewed attack on basic freedoms in Hungary.

The legislative proposal that was tabled in the Hungarian parliament on 7 April would force NGOs receiving more than €24,000 per year from outside Hungary to register as "civic organisations receiving foreign funds". This includes funding from EU sources not managed by a Hungarian institution. This would effectively stigmatise any organisation that receives such funding. The current bill is not an isolated occurrence. It is part of a wider governmental effort aimed at undermining the credibility of civil society in Hungary. Here, we specifically refer to the recently launched national consultation 'Let's stop Brussels'. The questionnaire accuses international NGOs operating in Hungary of interfering "in internal affairs [...] in a non-transparent way" and of inciting "illegal immigrants [...] to commit illegal acts".

The current legislation regulating civil society organisations already provides sufficient mechanisms for guaranteeing that these organisations conduct their work in a transparent, lawful and accountable manner. If accepted in its current form, the new bill tabled by the government would be unprecedented in a European Union member state. It would also severely constrain the space of action of independent civil society organisations at a time when other checks and balances have been significantly weakened in Hungary.

Civil Society Organisations should have the same right to operate freely and independently in fundraising and projects as prescribed in International Human rights law and also in line with article 11 of the EU Treaties. Based on these concerns, we call on the Hungarian government to withdraw the bill. Rather than stigmatising NGOs with an unnecessary and harmful piece of legislation, we urge Hungary's leaders to support NGOs which work for the well-being of society.

On a European level we join our forces to raise awareness about the situation to the highest political level and call for immediate action:

- on the European Parliament to adopt a resolution urging the Hungarian Government to withdraw the bill on NGOs following its debate on the situation in Hungary on 26 April, condemning firmly this law and demanding to withdraw it.
- on the European Commission to use as announced by the College of Commissioners all instruments at their disposal to uphold EU values as enshrined in article 2 of the EU treaties.
- on the European Council to engage with concrete steps by similarly applying pressure on the Hungarian government.
- on all EU institutions to adopt a consistent and systematic monitoring of the state of fundamental rights and democratic values in EU member States in a period when these rights are being undermined by several governments. This can only be achieved through an inclusive and transparent process and with the full involvement of civil society organisations and the citizens they represent.

We stand in solidarity with you – civil society actors and human rights defenders in Hungary and elsewhere. The further shrinking of civic space in Europe can no longer be tolerated.

Together, we will work to create a Europe that truly respects human dignity, freedom, democracy, equality, the rule of law, and human rights, including the rights of persons belonging to minorities in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.



The Danube at Budapest

Civil Liberties Diary - March

1st March

James Brokenshire (Northern Ireland Secretary of State) will highlight the importance of the Common Travel Area between Britain and Ireland during talks with leading EU figures during Brexit meetings in Brussels. He will also explain Northern Ireland's unique economic and political context ensuring Northern Ireland's interests are protected and advanced.

2nd March

There has been formal recognition of Irish Travellers as an indigenous ethnic minority in the Republic of Ireland. Taoiseach Enda Kenny described this as "historic" and commented that the recognition will give Travellers a "better future with less negativity, exclusion and marginalisation."

9th March

The Council of Europe regrets lack of progress on Irish Language Act. The continent's leading human rights organisation includes foreign affairs ministers from every member state. It said an advisory committee regretted that there had been little progress on the Irish language bill or a strategy for the development and enhancement of the language.

13th March

Taoiseach Enda Kenny announced that there will be a referendum into whether Irish citizens living outside of the Republic, including those in Northern Ireland, could be given the opportunity to vote in presidential elections.

15th March

The European Court of Justice has ruled that employers are entitled to ban employees from wearing headscarves. The Court decided that prohibiting the visible wearing of political, religious or philosophical signs does not constitute direct discrimination. The Church of England and the Muslim Council of Britain denounced this ruling, with the Church of England commenting, "In preferencing 'freedom to conduct a business' above the free expression of faith, the ruling potentially places corporate interest above those of the individual."

Geraldine Finucane (widow of Pat Finucane) is to take her legal fight for a public inquiry into his murder to the Supreme Court. Senior judges yesterday in Belfast refused Geraldine Finucane leave to appeal their decision that the British government was entitled to deny her such a tribunal, but this now clears the way for the family to petition directly for a hearing in London. Mrs Finucane's legal representatives confirmed their intention to continue their challenge to judicial findings that former Prime Minister David Cameron had acted lawfully. They are expected to argue that the case raises legal points of general public importance.

21st March

Body cameras will be worn by police officers in Causeway Coast and Glens District when they are on duty, in an attempt to gather higher quality evidence. Superintendent Jeremy Lindsay said, "the pilot of this technology in Derry City and Strabane also supports accountability and

transparency, both of which are key elements in increasing public confidence in policing".

30th March

Guy Verhofstadt, the European Parliament's chief Brexit negotiator, has stated that the EU will "never accept a hard border". Mr Verhofstadt commented that the EU had to protect the interests of its remaining states, especially Ireland in this case, and that "new unrest in Northern Ireland has absolutely to be avoided".

31st March

It was reported that public sector employers such as the NHS, government departments and schools will be required to publish information on any disparity in pay between men and women, in an attempt to put an end to discrimination.

Compiled by Fiona McGrath from various newspapers

Just News

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