

## Deal and no deal

**The extraordinary results from the UK General Election will take some time to digest and analyse and longer before the historical consequences become clear. However, it is important that a human rights organisation takes a view on what has happened and might happen, warns about the most negative possibilities and adjusts its lobbying stance to take account of the new political realities.**

The overall result, in the UK as a whole, has to be seen as positive from the standpoint of defending and promoting human rights. Indications before the vote were that the Conservative Party would be returned with an increased majority, committed to a fairly “hard” Brexit, boosted by a xenophobic ex-UKIP vote and with weakening of human rights protection on its longer term agenda.

In contrast, the Conservative Party has been denied an overall majority and there was increased support, especially among young people, for the Labour Party whose manifesto included explicit commitments on anti-racism, equality, human rights and social justice. Without taking a party political stance, it is clear that many voters rejected a xenophobic approach to social problems and embraced values of tolerance, diversity and fairness. There has been no consolidation of the reactionary forces which we believe were behind the Brexit vote and the threat of the repeal of the Human Rights Act and the possibility of withdrawal from the European Convention on Human Rights have receded.

Furthermore, a minority government, even with DUP support, is unlikely to be able to muster sufficient parliamentary votes to push through a hard Brexit. There is likely to be increased parliamentary scrutiny of the progress and results of the negotiations between the UK and EU – one of the objectives of the Miller case and our own Agnew case. There is thus more chance of a deal that minimises negative impacts on social justice and the protection of equality and human rights.

The DUP has, of course, done its own deal with the Conservative Party, acquiring an estimated £1 billion extra public spending for Northern Ireland. While such “pork barrel” politics are unsavoury, there is no doubt that the extra spending on health, education and infrastructure will be welcome. In Britain, there seems to be horrified fascination as elements of the media discover the rather unattractive answer to the question “Just who are the DUP?” The spotlight is rightly on the DUP’s extreme social conservatism and, in some of the liberal media at least, its dalliance with moneyed elements of the “alt-right” during the referendum campaign.

From a human rights perspective the Tory/DUP deal is problematic for a number of reasons. Chief amongst them is the perceived threat to the peace process. The DUP and Sinn Fein failed to agree on conditions for the formation of a new Executive before the deadline on 29th June. That in itself represents a blow to the process.

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In addition, the reality of the dominant unionist party allying with, and having significant influence over, all the power of the UK state could be a major de-stabilising factor. Many nationalists were already convinced that the pre-election May government were in close ideological alliance with the DUP and operated in tacit collaboration. On certain issues, key to the peace process, there can be no doubt that UK Ministers, as well as important Conservative politicians, were at one with the DUP. These include the national security veto on information to be given to victims' families after legacy investigations, attacks on lawyers and law officers engaged in legacy work and the demand for amnesty for British soldiers who might be accused of murder. More generally, the explicit hostility to human rights demonstrated by elements of the previous UK Government was shared by the DUP.

The DUP itself has never accepted the Belfast Good Friday Agreement as such, even though later agreements led it to participate in the institutions, sometimes positively and often more begrudgingly. This participation has, however, had the effect of blocking progress on a number of social issues, such as equal marriage and reproductive rights, a refusal to countenance the implementation of commitments in the agreements such as a Bill of Rights, a Single Equality Act and an Irish Language Act and a series of actions by individual DUP ministers that ignore equality regulations and seem designed to appeal only to elements of their own constituency. There is also the unresolved issue of the Renewable Heating Initiative (a botched scheme that could lead to the loss of up to £500m of public money), the role of the current DUP leader in the scheme and whether she should be First Minister while the inquiry into the affair is going on. The deal itself includes references to the Armed Forces Covenant and the ridiculous notion that any future mechanism for dealing with the past will have to be "balanced" towards state actors. These may be simply rhetorical flourishes but they are narrowly sectional and belie the claim that the deal is for "all the people of Northern Ireland."

At the time of writing, we do not know how the UK Government will respond to the failure to form an Executive. If there is a period of Direct Rule, British ministers would be making decisions but heavily influenced by the DUP. It would be inevitable that any decision would be proofed by how attractive or not it would be to the DUP. Tory ministers, like the current Secretary of State, may protest that they would act independently but the political realities and the actual power relationships would mean that the DUP had a disproportionate influence. This partly fulfils the DUP dream of majority rule but exercised through the medium of a UK government dependent on their parliamentary support. This is in fundamental contradiction to the peace settlement and would cause a level of instability that would have unknown consequences.

As we move forward, those who wish to combat impunity, progress the peace process and uphold human rights principles will have to be particularly vigilant on these issues. In terms of combating impunity, we will reject any one-sided amnesty or "statute of limitations" for British soldiers only. For the past few years we have been working hard to get the Stormont House Agreement implemented. In spite of the UK Government's problematic position on national security, it remains the only practical show in town for dealing with the past – the UK Government should publish and consult on a draft Bill as soon as possible. For the peace process, the optics of the situation will be bad enough; if there is evidence of collusion between the DUP and the UK Government on these matters, faith in the entire settlement as well as the rule of law will be undermined. In current circumstances equality is the underlying human rights principle which must be defended and promoted. Without the rigorous implementation of the equality duty on public authorities, public confidence in government here will rapidly leak away.

Paradoxically, an open alliance between Conservatives and the DUP may mean that policy will be better scrutinised. Informal, under the counter arrangements are one thing and may be subject to differing interpretation; open, formal agreements can be better judged as to whether they contribute to equality and justice. That will be one of the tasks of CAJ moving forward.

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## Lesson from the grassroots – Housing and accommodation rights

**PPR's recent gathering of international housing activists was dedicated to the victims of the Grenfell Tragedy – which UN Special Rapporteur on the Right to Adequate Housing, Leilani Farha described as 'a terrible betrayal of human rights' in one of the wealthiest boroughs of one of the wealthiest nations on earth.**

What greater example could there be of human rights abuse than the, now perhaps never to be known, number of women, men and children burned to death in their flats as fire swept across the cladding designed to hide their unsightly poverty from wealthy neighbours?

As such, the tone of the day was about the urgent need to mobilise effectively for change in the face of such a chasm between government and people.

Lessons were shared by activists driving campaigns for decent housing in Scotland, Ireland, South Africa and the USA; People living in tin huts, in 'direct provision', in high rise concrete prisons, at the mercy of mega landlords, the homeless, the stateless and those on never ending waiting lists.

They shared stories of systematic discrimination from the state and public authorities and of being denied access to society's wealth and property because of their economic status or ethnic, community or religious background.

Each shared years of experience engaging power to make positive change for their families and communities against the odds and often at great personal risk. The campaigns of *Ndifuna Ukwazi*, *The Movement of Asylum Seekers in Ireland*, *Clondalkin Travellers Development Group*, *Metro IAF*, *Housing for All*, *The Irish Housing Network*, *Edinburgh Tenants Federation*, *The Travellers of North Cork*, *Equality Can't Wait* and more gave many inspiring examples of tactics and strategies by which rights holders can force duty bearers to deliver.

Everyone spoke of the culture of resistance by government and public servants across jurisdictions. Resistance to participation. Resistance to change. Resistance to providing public resources to tackle well evidenced need; ranging from providing toilets to providing suitable spaces and structures for sustainable housing.

It was appropriate that Bernadette Mc Aliskey, veteran of our own Civil Rights Movement, closed the day by remarking with glee about the latest in the long line of political crises to hit our small infamous corner of the planet; *'We have no government! Let's see how much we can get done before we are saddled with a government again!'*

But the final word will go to Karen Donnelly from Equality Can't Wait. Karen is campaigning for homes on empty land in areas of high demand in a State which discriminated against Catholics since the State's establishment. Today, religious inequality is an accepted albeit unsightly norm. North Belfast, where Karen lives, is carved up and divided along religious lines by 40 foot 'peace lines'. The latest figures from the Housing Executive - established in 1971 to ensure fair and impartial housing policy – show a need for 938 additional units of social housing in Catholic areas and for 38 additional units of social housing in Protestant areas.

The seven towers – high rise blocks in the densely populated, largely Catholic, New Lodge Estate - are home to over 380 individuals and families. Two towers have had the PVC Cladding makeover so far. Like Grenfell, the unsightly buildings now look better from the perspective of motorway commuters.

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Despite the need for homes fit for families in the 21st century and a chorus of condemnation from 50 MLAs, the United Nations, the Council of Europe Commissioner for Human Rights, the Children's Commissioner and most recently the Equality Commission - no concrete action has been taken to tackle religious inequality in housing in North Belfast. Indeed the issue has been exacerbated by continuing political interventions in housing policy to block homes for Catholics in need and build homes where no need exists.

Rights are denied. Power is maintained, but as Karen explained to her fellow activists from across the world;

*'PPR has given me the tools, to fight. They have given me an awareness of my own rights, they've given me an awareness of the accountability of the policy makers, decision makers, and politicians and all the people in power. They've given me hope when I didn't have it. They've given me ambition to keep fighting to change things. Not just for me. Because if I do get my house at the end of this, that won't be the end of my war. Because if you replace me there's 20 million more of me waiting for a house in the areas that we come from and sitting watching all the things today what really struck me is that whether you're from Scotland or Africa or the poorer parts of USA, what does unite us all is that our human rights are really being abused...As one voice you won't get heard. With a lot of voices we have the power to change the world, from our own houses right up. Change our communities and change the world, and we need to take that.'*

Seán Brady, PPR

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## Is International Human Rights Law Under Threat?

**UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein delivered this lecture at the Law Society, London 26 June 2017 on the occasion of International Day for Victims of Torture. Here is the first part of the lecture.**

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21803&LangID=E>

"Earlier this month, Britain's Prime Minister called for human rights laws to be overturned if they were to "get in the way" in the fight against terrorism. Specifically, Theresa May said there was a need "to restrict the freedom and movement of terrorist suspects when we have enough evidence to know they are a threat, but not evidence to prosecute them in full in court." For an increasingly anxious public, shaken by the recent and dreadful terrorist attacks, her remarks no doubt reflected real anger and frustration, but they also seemed intended to strike a chord with a certain sector of the electorate, and it is this expectation that truly worries me.

"British Government officials would probably claim the comments should be understood in the context of a tough electoral campaign, and would presumably try and reassure us quietly that the government's support for human rights remains steadfast and unchallengeable.

"Whatever the intention behind her remarks, they were highly regrettable, a gift from a major Western leader to every authoritarian figure around the world who shamelessly violates human rights under the pretext of fighting terrorism. And it is not just the leaders.

"A few days ago, citing Prime Minister May, a former Sri Lankan rear admiral delivered a petition to the President of the Human Rights Council. He demanded action be taken against my Office for "forcing" Sri Lanka to undertake constitutional reforms, and for exerting pressure on them to create a hybrid court to try perpetrators of war crimes and crimes against humanity – when in reality, he claimed, all they had engaged in was fighting terrorism.

"My first question: Why is international human rights law such an easy target? Why is it so misunderstood, so reviled by some, feared by others, spurned, attacked?"

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My second: If the Prime Minister meant what she said, which universal rights would the UK be willing to give away in order to punish people against whom there is insufficient evidence to justify prosecution? What, exactly, are the rights she considers frivolous or obstructive? The right to privacy? The right to liberty and security of person? Freedom of expression? Freedom of religion and belief? The principle of non-refoulement? The prohibition of torture? Due process?

“And why are we fighting the terrorists in the first place, if not to defend both the physical well-being of people and the very human rights and values the Prime Minister now says she is willing, in part, to sacrifice - in order to fight the terrorists? And where would it stop? Foregoing some rights now may have devastating effects on other rights later on. If we follow this reasoning to its logical conclusion, the eventual complete unwinding of human rights would transform us – both states and international organizations. To quote Nietzsche: "Whoever fights monsters should see to it that in the process he does not become a monster". We would be in danger of becoming virtually indistinguishable from the terrorists we are fighting.”

After a wide-ranging lecture, particularly condemning the use of torture, the High Commissioner concluded:

“My hope lies not primarily with governments, but with those people who reject all forms of terrorism, reject extreme, discriminatory counter-terrorism, and reject the populisms of the ideological outer limits... My hope also lies with the most courageous of us: the human rights defenders, often victims of violations themselves who, armed with nothing beyond their minds and voices, are willing to sacrifice everything, including seeing their children and families, losing their work, even their lives, to safeguard rights – not just their own, but the rights of others.

“How stunningly beautiful is that? I am moved by them. We should all be. It is they who ensure we retain our equanimity, and it is they, not us, who bear the greater burden of defending this crucial part of our system of international law. It is they who will save us, and we in turn must invest every effort in protecting them.”

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## Congratulations to Fionnuala Ní Aoláin and her appointment as the UN Special Rapporteur

CAJ is delighted to congratulate Professor Fionnuala Ní Aoláin who, on June 23rd, was named United Nations Special Rapporteur for Protecting Human Rights while Countering Terrorism. Fionnuala has been a member of CAJ since she was a first year undergraduate at Queen's University Belfast. She has also been a member of our Executive and the Editor of Just News since she was in her third year. She is, of course, a world-renowned academic and is Associate Director of the Transitional Justice Institute at Ulster University. Fionnuala has a significant track record as an expert in this field. Her book *Law in Times of Crisis* with Prof Oren Gross (CUP 2006) was awarded ASIL's Certificate of Merit for creative scholarship (2007). She is co-author of *On the Frontlines: Gender, War and the Post Conflict Process* (OUP 2011), and *the Handbook on Gender and Conflict* (OUP, 2017).

See <https://www.ulster.ac.uk/staff/f-niaolain> for a more detailed biography.

CAJ is immensely proud that Fionnuala, who started as a human rights activist during some of the dark days in Northern Ireland, will now be able to promote human rights at the highest international level. She has our best wishes and continuing solidarity in the cause of human rights.



## Establishment of a Childcare for All Campaign

**A new coalition is being established, responding to calls from those including families, community and voluntary sector organisations, trades unions, childcare providers, and others, who want to see an end to the political stalemate on support for the provision of high quality, affordable and accessible childcare in Northern Ireland.**

With ongoing political instability, the roll out of welfare reform and changes to the financial landscape of support with childcare costs, it is critical that childcare is an issue that is given high priority by the Executive. This is particularly timely given the recent increases reported in child poverty levels and economic inactivity in Northern Ireland.

A large amount of high quality work has already been done on this issue including research, lobbying, submitting policy consultation responses, and direct service provision to families seeking access to childcare. The lack of progress has, however, frustrated all of those who have invested energy in trying to push for progress on childcare provision. A number of these organisations have come together to establish a coalition of civil society partners who will work collectively to present a united challenge, and opportunity for engagement, to those responsible for planning and investing in childcare, moving towards a coordinated public campaign to put childcare firmly on the agenda of a new Executive and secure their commitment.

### Context

The Executive's draft Childcare Strategy was launched for public consultation in July 2015, with the consultation closing on 13 November 2015. We are yet to see the publication of a full Childcare Strategy or an analysis of the responses to the consultation. The draft strategy set out two main aims:

#### **Child Development:**

to give all our children the best start in life, preparing them for lifelong wellbeing and achievement, thereby creating the basis for a better, more prosperous future.

#### **Parental Employment:**

to enable parents to join the workforce, thereby enhancing prosperity and to improve gender equality by enabling mothers to join the workforce, return to work and remain in work.

These aims were broadly welcomed, however, responses highlighted fundamental issues including that the draft Strategy failed to set out firm commitments or actions, was lacking in detail and did not have an allocated budget. Unless a substantive budget is attached to the Childcare Strategy, its ambitious objectives will prove unachievable.

Within this context, there are a range of issues that have been identified as highlighting the need for investment in childcare in Northern Ireland:

#### **Access and affordability**

The average cost of a full time childcare place was £168 per week in 2016 when a third of parents reported that their childcare bill was higher than their mortgage or rent payments. 59% of parents consider that there is insufficient childcare in their local area with 47% reporting difficulties in accessing flexible childcare.

### **Women's economic empowerment and the gender pay gap**

The Northern Ireland Taskforce on Employability and Long-term Unemployment has reported that lack of access to affordable and decent quality childcare provision is a key barrier to parents entering the labour market, particularly for women. Research from the Government Equalities Office found a significant proportion of the gender pay gap is attributable to the negative effect on wages of having previously worked part-time or taken time out of the labour market to look after children. The Equality Commission for Northern Ireland has also identified women's caring responsibilities as a barrier to equality in employment.

### **Early years development of children**

Research shows that investing early saves the public purse in later years. Early investment in childcare in particular has significant long-term benefits for society based on children's increased school and career achievement, and reduced costs in the health and criminal justice systems. Childcare is key to this investment yet is often omitted as a tool in giving children and young people the best start in life.

### **Addressing child poverty**

Inability to access affordable, quality childcare impacts on the rate of child poverty in three key ways, acting as a barrier to employment for parents, placing pressure on family incomes and not supporting the essential developmental needs of children.

### **Supporting and developing the childcare workforce**

A skilled, well resourced and supported childcare workforce is critical to ensuring that children receive the high quality care and education that will give them the best start in life.

## **The campaign**

The **Childcare for All** coalition will be responsible for campaigning for the realisation of universally affordable, accessible, quality childcare provision in Northern Ireland. It will allow us to bring together the concerns, as well as the knowledge base and experience, of different organisations from across the sectors and speak with one voice calling for investment in childcare and a robust, costed strategy that will ultimately lead to universal childcare that is sustainable, employs a professional well-paid workforce and provides quality early years care and education.

The campaign is still being developed but we hope to launch in the Autumn so watch this space!

**We would be keen to hear from anyone with an interest in taking part whether as a member of the steering group, as a supporter, or by sharing your experience to inform the development of the campaign strategy.**

**For further information,  
please contact Kellie Turtle at WRDA ([Kellie.Turtle@wrda.net](mailto:Kellie.Turtle@wrda.net)) or  
Aoife Hamilton at Employers For Childcare ([Aoife.hamilton@employersforchildcare.org](mailto:Aoife.hamilton@employersforchildcare.org))**

## Goodbye to Arms

“The implementation of the peace agreement is now our political platform”, declared FARC leader, Timochenko (Rodrigo Londoño), addressing the assembled audience to celebrate an important step in the implementation of the Colombian Peace Agreement – the handing over of the personal arms of FARC combatants. The location was the hillside Mariana Paez TVZN – transitional zone; a remote huddle of tarpaulin and blue plastic makeshift accommodation that comprises the ‘cantonment’. Timochenko was speaking after the UN Head of Mission, Jean Arnault, welcomed the hand-over of 7,132 guns that individual FARC members had exchanged for certificates of normalization, the day before.

The weapons are being held in sealed containers and are due to be destroyed on 1st August. The agreement is that once transitioned, FARC will receive the ‘necessary support’ for reincorporation – a concept that trips off the tongue easier than the reality of implementation. Images of the weapons handover flashed across the three screens situated as a backdrop to the stage, where Arnault suggested that the UN role in supporting the Colombian process might be a model for other conflicted areas of the world. The UN Monitoring Mission coordinates the political, unarmed tripartite initiative, composed of UN personnel, Colombian military and police, and FARC, working together. Members of the Mission wandered through the crowds at the reconciliation event to celebrate the arms decommissioning on Tuesday 27 June.

### A Flight of Butterflies

As Timochenko handed the microphone over to President Santos, gifts were exchanged and hundreds of delicate, lemon-hued mimosa butterflies were released. They fluttered skywards, tiny specks against the somber green of the surrounding mountains. Some even wavered against the trio of flags flapping from bamboo poles – the Colombian national flag; the white flag of peace and the red hammer and sickle flag of the PCC – the clandestine Colombian Communist Party of FARC. Serried ranks of the FARC leadership sat behind Timochenko when he asserted that “This day is not the end of FARC, but the end of the armed uprising of 53 years”. In response, President Santos confirmed that “Our peace is real and irreversible”, adding that the disarmament was the best news in Colombia in 50 years. Amongst the international representatives were the EU Special Envoy to the Colombian Peace Process, Eamon Gilmore, alongside diplomatic representatives from Norway, Cuba and Ireland. The largely FARC audience wore white tee-shirts emblazoned with the message – ‘Paz con justicia social’.

If the occasion was marked by symbolism and good will, the conditions in the transitional zone were less impressive. Heavy mud sucked at the ubiquitous water boots worn by both FARC residents and the visitors alike. The makeshift encampment was served by the most elementary sanitary and cooking facilities, a fact referred to by Timochenko, accusing the lack of infrastructure as an indication of the fact that the Colombian Government was in breach of its Agreement obligations. Mauricio Jaramillo (‘El Medico’) repeated the concern, pointing out that legal and administrative obstacles were undermining the 245 page Peace Agreement. Having joined FARC, and the PCC, in the early 1960’s, El Medico spoke with quiet authority. The promised ‘reincorporation’ process had to be honoured as a matter of urgency. This requires psycho-social support, economic development, educational provision and the necessary living and health infrastructure. The concept of ECOMUN cooperative development is seen as central in this heavily rural organization.

### The Question of Prisoners

‘El Medico’ also raised the issue of FARC prisoners. During the speech delivered by President Santos, homemade banners were unfurled by FARC members in the audience demanding the release of the 3,000 or so prisoners still being held. One flip chart banner made specific reference to Simon Trinidad, a FARC member being held for drug trafficking in the USA. A number of recently released prisoners are living in the Mesetas cantonment together with the FARC combatants.



One explained how some recently released prisoners run the risk of being re-arrested when they leave prison; another spoke about the power of the judiciary to frustrate the spirit of the Peace Agreement. A woman ex-prisoner added her voice to highlight the deplorable conditions that female FARC members are still being held in, with little information as to their future.

In February, some 97 FARC prisoners went on hunger strike for better prison conditions and to accelerate the government commitment to the peace process, with specific reference to health facilities in San Isidro prison. A FARC member, Marino Fernandez Puyo, had recently died given lack of health care after being stabbed by another inmate. For FARC, the release of prisoners is a central demand, although the leadership has to balance a strategy of blame against the Santos Government, with recognition of the importance of maintaining popular optimism in the implementation of the peace process. This balanced approach is particularly important in the context of the narrow defeat of the autumn referendum on the Agreement, which was rejected by a narrow margin of 50,000 votes. FARC also has the task of responding to the deeply held conviction of its own membership that the release of prisoners is a sine qua non of the process. The situation is made even more pressing due to the murders of a small number of recently released prisoners, such as Rigobel Quesada, who was killed when visiting family members in the southern region of Colombia.



### Changing the Narrative

Speaking at a seminar on the challenges of reincorporation, organized by the International Crisis Group and the Embassy of Ireland in Bogota on 29th June, Paster Alape, another senior FARC-EP spokesperson, set the challenges in a broader political framing. "Justice", he said, is to create "Better conditions of life for society" in place of elite control rooted in the colonial legacy of Colombia. The non-violent political strategy to be adopted by FARC is still being clarified and is due to be agreed at the forthcoming party Congress, but both 'El Medico' and Pastor were clear that any incorporation approach for FARC members had to benefit the surrounding local communities as well. The rural location of these communities may well prove a political challenge given that it tended to be urban areas that rejected the peace Agreement.

With pending Presidential Elections in 2018 the transformation of FARC into an organized political force is not something that can be postponed. Pastor Alape emphasized the importance of making links with broader civil society, while recognizing that social and trade union leaders are still being targeted for assassination. There is also the need to maintain confidence in the peace process. The celebration of reconciliation in Mesetas was one such event, with Timochenko tweeting the night before – 'The laying down of arms is an act of will, courage and hope'. The response by President Santos, that "You will have all the security guarantees that are necessary", needs to be realized in practice if a sustainable peace is to be achieved.

**Avila Kilmurray**

NIC-ICTU Global Solidarity with Justice for Colombia hosted events in Belfast on 3 July 2017 with Colombian trade unionist Huber Ballesteros is one of the leaders of the Patriotic March, a member of the National executive of the Colombian trade union congress (CUT) and vice-president of the agricultural workers' union FENSUAGRO. He was arrested in 2013 when he was leading the National Agrarian Strike. Freed in early 2017 without having been convicted of any crime, his life is continually at risk. Huber outlined in his talks given in Belfast's First Presbyterian Church that despite the peace accord between the government and FARC, supported by the trade union movement, the threats and killings of trade union and other human rights activists have continued unabated.

## Parades, bonfires and flags and the ‘rights of others’: judgements of note at home and in Strasbourg

**As the marching season is now upon us it is timely to take stock as to how the human rights legal framework can contribute to facilitating both public assembly and protected free expression whilst also ensuring protection of the ‘rights of others’. Parading so far has not led to the standoffs of previous years. Much of the attention has been focused on concerns of sectarian and racist expression (as well as issues of safety) in the context of 11th night bonfires. There has also been the placement of loyalist paramilitary flags in new housing developments where the PSNI has again restated its position it is not its job to remove flags unless there are ‘substantial risks to public safety’. Two court rulings earlier in the year provide pointers to a framework relevant to all of these issues, and challenge this view.**

In February 2017 the UK Supreme Court delivered its ruling in the *DB v the PSNI* case that related to weekly unnotified loyalist flags marches in late 2012 and 2013 past the nationalist Short Strand area of east Belfast. Both the Parades Commission and PSNI had contended that they had no legal power to intervene. The Commission argued they could not issue a determination where there had been no notification and hence the matter was one for the PSNI given failure to notify is a criminal offence. The PSNI in turn argued they could not intervene on the ground to restrict a parade in the absence of a determination; rather their powers were limited to gathering evidence for a referral to prosecuting authorities, and general public order measures.

The Public Processions Act 1998 can be read as allowing the Parades Commission to issue a determination even in the absence of a notification, but this was not the Commission’s view, and is an interpretation the Supreme Court has ultimately endorsed. This returns us (in those cases which are unnotified only) to a pre-1998 position whereby the PSNI and not the Commission take the decisions on parades.

The PSNI position that they had no power to intervene was rejected by the Supreme Court which, in light of non-notification being a criminal offence, pointed to the PSNI’s duty to prevent the commissioning of offences (s32 Police NI Act 2000 and common law) as a legal power to prevent the offence of an unnotified protest. The PSNI could therefore have blocked or rerouted passage of the protest past the Short Strand in the same manner as would have been done on the basis of a determination. The PSNI had the power to intervene.

But how does a PSNI duty to prevent the offence of an unnotified protest sit with broader ECHR rights? It has been established the forced dispersal of a peaceful protest just because of the absence of prior notification offends the ECHR. The arrest and charge of all present on any unnotified parade would clearly be disproportionate. Take the example of children in a festive candle lit procession from one youth club to the other that they did not think had to be notified – is it the PSNI’s duty to forcibly disperse or arrest them or ensure they are greeted with a line of riot shields blocking their passage? Clearly not. The Supreme Court recognised that notwithstanding the legal powers to intervene there was operational discretion on the part of the PSNI regarding what action to take. However it importantly noted that such discretion was constrained by both judicial oversight and ECHR rights themselves, notably the ECHR Article 8 rights of Short Strand residents. It is possible to distinguish parades that raise no other issues beyond being unnotified, to from those that raise significant issues of interference in the ECHR ‘rights of others’ (a legitimate limitation ground on Assembly and Expression). In the case of *DB* the Supreme Court itself highlighted that the loyalist flag marches fell into this latter category:

There was substantial violence and disorder as the parade went through that nationalist area. Sectarian abuse was directed at the residents of Short Strand; stones and other objects were thrown at them; and their homes were attacked [12]

The Supreme Court noted that the trial judge had held that the attacks on the appellants home (a Short Strand resident) had engaged Article 8 rights to private and family life and that the state (in the form of the PSNI) had failed to discharge its positive obligations to protect the resident from interference in that right.

The increased codification of Article 8 ECHR rights as providing for positive obligations for intervention to protect against actions that include being subjected to racist (which would include sectarian) expression has been a feature of Strasbourg jurisprudence. In the month before the DB ruling, January 2017, the European Court of Human Rights in the case of *Király and Dömötör v. Hungary* held there had been a violation of Article 8 in the context of policing shortcomings over racist abuse against the applicants during an anti-Roma demonstration. This had taken the form of a protest of around 400-500 people, including a right wing political party and militant far-right groups, in the town of Devecser in August 2012. Speeches were made containing racist threats against Roma people then demonstrators marched down a neighbourhood home to many Roma, chanting racist slogans. Some demonstrators dismantled police cordons and threw stones and other objects into gardens. Both applicants were in their gardens and reported this to police who they argued did not take steps to stop the demonstration or identify perpetrators. Ultimately the summary of judgement states that:

The Court noted that the cumulative effect of these shortcomings had been that an openly racist demonstration, with sporadic acts of violence, had remained virtually without legal consequences. Indeed, the applicants' psychological integrity had not been effectively protected against what had amounted to nothing less than organised intimidation of the Roma community, by means of a paramilitary parade, verbal threats and speeches advocating a policy of racial segregation. The Court was concerned that this could be perceived by the public as the State's legitimisation and/or tolerance of such behaviour. Notwithstanding the room for manoeuvre ("margin of appreciation") given to the State in such matters, the Court held that there had been a violation of Article 8.

In doing so the Court relied upon its case-law concerning expression alleged to have stirred up violence, hatred and intolerance. It is in this context that the principles established in the DB case have a read over in relation to the PSNI's position on intervention in relation to bonfires and flags. In the circumstances whereby such items in the context they are placed 'stir up hatred' on a protected ground (such as ethnicity, religion, sexual orientation), they will constitute an offence under Part III of the Public Order NI Order 1987. The burning of items meant to represent Catholics or migrants on bonfires or the placing of a flag of a paramilitary organisation engaged in racist/sectarian intimidation by the home of the 'other' who have moved into an area would fall into this category.



In these circumstances therefore the PSNI do have a legal power to intervene in arising from their duties to prevent the commissioning of offences – in this case the offence of stirring up hatred offence under the 1987 Order. As held in DB there is still operational discretion on action – but this is itself qualified by the positive duties under Article 8 ECHR to protect the rights of others. The position that there are only powers and duties to intervene when there are 'substantial risks to public safety' does not wash.



## Civil Liberties Diary - May / June

### 1st May

A human rights group has called for an investigation into rates relief in Belfast. The Participation and the Practice of Rights (PPR) group made this demand when it was revealed that nearly £100 million in rates relief has been granted in two years. Sean Brady, PPR spokesman, stated that private developers are given rates relief while “sitting on land and property which could be used to tackle problems like the housing crisis”.

### 4th May

The Democratic Unionist Party has met with Irish language groups once again in an attempt to engage with Irish speakers. Arlene Foster, the DUP leader, commented that she wanted to “respect and better understand” the Irish culture and language.

### 10th May

A mother has been awarded damages against a Belfast advice centre, after bringing a case alleging disability discrimination, when she lost her part-time job because she had a disabled daughter.

### 22nd May

Stormont officials have stated that there was a lack of a “formal recognition system” for equality statements which were made by groups which benefited from a community hall grants scheme. CAJ deputy director Daniel Holder commented that the statements should not be a “‘tick box’ exercise”. The CAJ has also asked the Equality Commission to launch an investigation into the community hall programme, claiming that the programme breaches equality requirements.

### 5th June

The Department of Health has revealed that 1316 health workers in Northern Ireland are not being paid the National Living Wage, and

are still awaiting a pay increase, which was to be implemented two months ago.

### 7th June

A victims’ campaigner whose son was murdered in 1997 is alleging that his human rights are being breached by the PSNI, in their inefficiency in carrying out an inquest into his son’s death. Judicial review papers have been filed with the High Court in Belfast.

### 13th June

Sir Anthony Hart, chair of the Historical Institutional Abuse Inquiry (HIA), has called for the Northern Irish government to create a compensation scheme for victims. Sir Hart wrote to politicians to request such a scheme, suggesting compensation awards of £7,500 to £100,000.

### 16th June

The Equality Commission has decided to investigate funding decisions made by the Stormont Department of Communities, in order to decide whether the Department complied with equality commitments in two recent schemes: the Community Halls Pilot Programme and the Líofo Gaeltacht Bursary Scheme. The CAJ was the first to raise concerns about these schemes, requesting information on the compliance with equality screening, and it was revealed that the screening was not carried out satisfactorily. CAJ deputy director Daniel Holder commented, “In this context we welcome the Equality Commission’s decision to launch an investigation into the Community Halls and Líofo bursaries programmes.”

### 20th June

An independent review has been launched by the Children’s Commissioner into the mental health services and support available in Northern Ireland for young people.

There have been claims that the current services are ‘inadequate’, with only 7.8% of the mental health budget being spent on child and adolescent mental health services.

The Court of Appeal has given permission for a humanist couple to be married in a legally-recognised service, with a humanist celebrant. Under the current law of Northern Ireland, the couple would need to have an additional civil registration for the marriage to be recognised, but they claim that the lack of recognition of a humanist ceremony is discriminatory, and therefore prohibited under the European Convention on Human Rights.

### 30th June

The government at Westminster has stated that it will grant free access to NHS abortions in England for Northern Irish women. This announcement comes after a recent decision by the Court of Appeal that abortion laws in Northern Ireland are not a violation of human rights. The Human Rights Commission will challenge this ruling in the Supreme Court.

*Compiled by Fiona McGrath from various newspapers*

## Just News

**Just News** welcomes readers' news, views and comments.

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