

## The Implication of Brexit for migrant Workers

BrexitLawNI in partnership with STEP, the Stronger Together Network, the Equality Coalition, UNISON, CAJ, the QUB Human Rights Centre, Senator George J. Mitchell Institute for Global Peace, Justice and Security and the QUB Institute for Criminology and Criminal Justice held a conference entitled, *'The Implications of Brexit for migrant workers: what to watch out for'* on 13 February 2018 in STEP offices in Dungannon. The conference event featured presentations by Professor Colin Harvey QUB, Daniel Holder CAJ, Fidelma O'Hagan CAJ, and chaired by the civil rights leader and Director and Founder of STEP, Bernadette McAliskey. The Conference was hugely successful, with over 80 people in attendance, including migrant workers, advocates, union representatives, human rights activists, community stakeholders, politicians and public officials.

The purpose of this event was two-fold. First, it sought to provide information about Brexit and the possible consequences for migrant workers and black and minority ethnic communities – focusing specifically on free movement, the border, and existing rights. This occurred mainly through presentations and question and answer sessions with some of the BrexitLawNI team members. Second, and more importantly, the event was designed to hear from people living and working in or near Dungannon about the implications of Brexit for them.

Daniel Holder of CAJ, spoke about the potential for Northern Ireland to become 'one big border' and what this would mean in terms of how immigration might be policed. Concerns were particularly expressed around the potential role that racial profiling and racial discrimination might play in influencing immigration control. He stated that racial profiling is currently legal in the UK according to the Race Relations Act 1997, and outlined the need for this legislation to be amended – particularly in the context of Brexit and the increased risks of racial profiling and discrimination.

Fidelma O'Hagan of CAJ outlined the surprising types of immigration enforcement being carried out by people who are not employed as immigration officials or border officers. She provided examples of banks investigating the immigration status of clients or potential clients, and closing, freezing, or refusing to open accounts, based on immigration information provided by the Home Office. She stated that: "10% of bank refusals to open an account are made incorrectly. This kind of enforcement has real implications for people's lives – in some cases preventing people from accessing their own money."

Professor Colin Harvey covered a wide-range of topics related to free movement post-Brexit. Some of the key themes included an analysis of whether existing immigration and asylum legislation is "fit for purpose" and how we can make sure, going forward, that it does not map the past. He also discussed Scottish government's position on immigration and how this might be useful for Northern Ireland. Both jurisdictions have unique immigration needs, and heavily rely on the labour of migrant workers. He made the case for immigration control to become a devolved matter in both Scotland and Northern Ireland so that local interests and needs could directly dictate government policy in these areas.

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There were a number of very interesting themes that emerged from the general discussions in the room. Some of these included:

- Immigration lawyers identified issues with the current immigration system as well as the new problems created by Brexit. For example, a minimum of 3000 applications are going to be made for temporary status for EU citizens, and as of yet, the government does not have a viable system for carrying out this task.
- A number of people in the room discussed the need for reform of immigration approach that is tailored to the specific needs of Northern Ireland. Some of these unique needs include the need for/reliance on migrant workers, the importance of multiculturalism (particularly due to the legacy of the troubles), and the different social and economic realities here.
- Some attendees shared experiences of racial profiling. Many of these stories had similar themes of witnessing people being targeted or being targeted themselves for immigration checks based on the colour of their skin, or 'not looking like' they are from these "islands"
- A final, and key theme of the day was destitution. It became apparent that many of the immigration policies and political rhetoric (particularly since the Brexit referendum) have targeted the most vulnerable people in society by attempting to make them destitute – all in an effort to force them to leave.

While this picture is a relatively bleak one, the event ended on a positive note with discussion on ways to move forward. Led by Bernadette's call to action, the group engaged in a lively discussion about possible solutions and strategies to ensure that these negative implications of Brexit are minimised. Through awareness raising, information sharing, and working together to propose solutions, it is hoped that the Brexit negotiators, on both sides, will take the unique implications for Northern Ireland into account.

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## Emergency Powers, Derogation and Counter-Terrorism

On March 1st 2018, I presented my first report as United Nations Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism to the United Nations Human Rights Council. The topic of that Report will be very familiar to Just News readers, titled *The Human Rights Challenge of States of Emergency in the Context of Countering Terrorism* given the long experience of Northern Ireland with emergency law and practice.

The report addresses my deep concern about the normalization of emergency powers in national legal systems, underpinned by evidence-based and discernable patterns of serious human rights violations that follow from extensive counter-terrorism regulation triggering states of emergency. States of emergency are synonymous with extensive and sustained human rights violations. Such patterns have been empirically documented for decades (including in Northern Ireland) underscoring the need for sustained oversight of emergency powers and robust review to ensure that states of emergency are not being used disingenuously by states to thwart fundamental rights including due process, freedom of expression and assembly, family life, privacy, and violations of non-derogable rights including the right to be free from torture and arbitrary deprivations of life.

In the report, I set out to show how the relationship between emergency powers and counter-terrorism norms and practice constructed. I accept from the outset that human rights law enables States to limit the full exercise of derogable rights when governments are faced with exceptional challenges.

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Thus, in truly exceptional circumstances states may place proportionate and necessary restrictions upon human rights. But, this permission is not a carte blanche to permanent restrictions, nor it is a basis to abuse rights simply to consolidate power, snuff out legitimate dissent, and quell political opponents. Critically, any restrictions must function as a means to return the legal system to normal (meaning rights protective) functioning.

I make clear that an emergency law or practice that suspends or limits fundamental human rights need not have the title “emergency” to function as an exceptional power. Simply put counter-terrorism norms and practices fall into this category when they engage in sustained rights restrictive practices, justified on internal or external threat to the state. It is the characteristics of counter-terrorism laws and practices, the scope of their impact on the enjoyment of human rights, the length of time under which they are operationalized, that qualifies them as an ‘emergency’ power, subject to close scrutiny and particular oversight under international law.

My report documents how the proliferation of counter-terrorism norms and practices across the globe in the aftermath of 9/11, has spawned a new set of de facto and permanent emergencies in national practice. I underscore that de facto (meaning undeclared) emergencies and permanent emergencies are a violation of States’ treaty obligations. The proliferation of states of emergency is being facilitated by domestic legislation in numerous States that uses vague and overly broad definitions of ‘terrorism’, with the practical result that such legislation is being used to target a range of civil society actors, human rights defenders, bloggers, political activists of various hues, and those who simply disagree with the government in power. These deployments of counter-terrorism laws are an abuse of law and in contravention of the obligations taken on willingly by states when they sign and ratify human rights treaties. Moreover, the evidence we have on the conditions to terrorism and the “push and pull” factors to terrorism show us that repressive laws further entrench cycles of violence and can lead to radicalization.

The report reminds States that many of them have robust, effective and highly functional legal systems that are capable and designed to withstand a range of challenges, including those posed by violent, politically motivated offenders. Thus, terrorism may trigger the conditions of emergency but that does not per se mean that States must use emergency power to regulate terrorism, specifically when the ordinary law of State is sufficient and robust. I underscore my concern that there has been an ongoing rush post 9/11 to counter-terrorism regulation without adequate consideration of the capacity of the ordinary law of many States to function effectively.

I note that in many parts of the globe, we have lost sight of the validity of using adequate and existing legal tools to confront violent challengers, and instead spiral towards ever-trenchant and rights negating legal responses. In turn, the entrenchment and consolidation of emergency powers through the enactment of counter-terrorism laws, many of which pile up over years, leads to the problem of complex emergencies, where the scale and scope of emergency powers is entrenched, multifaceted and difficult to oversee adequately. I stress that as emergencies consistently co-relate to serious human rights violations, the result is to create serious rule of law deficits and we all understand that these deficits and the poor governance that accompanies them contributes to the conditions conducive to terrorism itself. This circularity does not advance sustainable security, in the long term it undermines the security States say they seek. The report concludes by setting out a set of recommendations to state on how best to conform to their international human rights obligations and to ensure the full protection of human rights while countering terrorism.

The full report can be accessed here:

The United Nations Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism

Fionnuala Ní Aoláin

## Irish Language Act - What And Why

More has been written about the Irish language generally and the Irish Language Act specifically in the past 14 months, particularly in mainstream media, than has been in the past 14 years combined. For those of us campaigning for rights for speakers and those interested in the development and status of the Irish language in society here, this exposure has been hugely positive and is a direct result of an organic, community-led campaign which has transformed how the language is viewed. The fifteen thousand Irish speakers who filled Belfast city centre on 20 May 2017 represented an autonomous movement for change. Our campaign represents one manifestation of a wider social and political phenomenon, taking root across the globe, wherein young people champion progressive issues, not content to follow any party line, but to affect change through their own agency. What has been particularly welcome has been the fact that throughout the year those young voices came to the fore on our radios and television screens, as opposed to the tried and tested media tradition of running to the closest MLA.

Much focus, however, has been given to the reasons not to bring about legislative change, which I feel have been sensibly and successfully refuted. Among the arguments against the implementation of an Act has been; prohibitive cost, relatively low numbers of speakers, clogged up courts and, more recently, the politicisation of the language. As a result of this noise and in spite of the best efforts of those arguing for change, the basic question of What and Why has been largely ignored.

There are many reasons for an Act. Whether we refer to the historical role of Irish or to the self-empowerment that comes with learning Irish or to the importance of its shared heritage, or to the promises made in the Good Friday Agreement and the St. Andrews Agreement or to the European and International charters that affirm the wide range of statutory responsibilities incumbent on the Government to defend minority languages, they are reasons within themselves to implement an Irish Language Act.

This, however, does not make reference to the simplest and undeniable reason to implement an act. That is, that an Irish Language community exists in the North. They are a community that speak Irish, that fully support Irish, that learn about the world through Irish, and it is a community that has had a monumental growth in the last few years (it is estimated that the 6,000 people who use the Irish education system in the North will double, at least, in the next 7 years).

At present, this community has no protection in the same way as Welsh speakers in Wales or indeed other speakers of Gaeilge in the south do. Therefore, the state has the power to ignore the Irish Language Community or to oppress it or to deny it basic and legitimate rights, and no legal mechanism exists to address this. The now famous case of Liofa highlighted this, and was only a small example of a continuous, long-term pattern.

Currently the future of the Irish Speaking Community, and the future of the language itself, depends completely on the personal opinions of executives and ministers. There is a desperate need for an Irish Language Act to provide statutory, lawful protection for the language and its community, and to secure and strengthen the language itself, something that would be beneficial to the community in general.

Despite 'project fear' reaching fever pitch and a lot of #fakenews around what such an Act might look like, local cross-party and international support has never been higher for legislation. A majority of 50 from 90 MLAs from across 5 parties, Alliance, PBP, Green Party, SDLP and Sinn Féin support the community campaign for a stand-alone Irish language Act; as well as the Irish Government, the NI Human Rights Commission, the Council of Europe and the United Nations.

Similar legislation already exists across these islands, between Wales, Scotland and the south of Ireland, making us the linguistic anomaly here.



Reading some of the commentary over the past couple of weeks has brought a fresh dimension to the debate; and indeed highlighted the need for the parity of esteem promised in the Good Friday Agreement. Writing for Open Democracy Adam Ramsey challenges the ‘politicisation’ narrative used by some opposed to an Act, claiming:

‘Of course the Irish language is political: it’s always political for marginalised minorities to express themselves. It’s always political to defend diversity in the face of those who demand a monochrome society.’

The Irish language Act is about affording those who wish to use the language the choice and the provision to do so. For those who do not wish to engage with the language, there will no compulsion to learn or to speak Irish. As Daniel Holder from the CAJ explained succinctly in a recent blog, the rights of the minority cannot, do not and will not impinge on the rights of the majority. Language rights are human rights (is cearta daonna iad cearta teanga), to be enjoyed by all and denied by none.

We have a unique chance in this historic period. There is now a greater appreciation of the language than at any point in our recent history and we believe firmly that there is broad public support for statutory measures to protect it.

Around 7,000 languages currently exist in the world, with 90% expected to be extinct by end of this century. Numerous measures have been taken, rightly, to protect our environment, flora and fauna and wildlife. Why can we not take similar measures to protect the human cultural heritage of this island – something that is particularly unique to us and which binds us all together and impacts on all of our lives? We have something special in our grasp; the oldest written vernacular in Europe still in daily usage. It pre dates Christianity and certainly our political ideologies. Despite everything; centuries of upheaval, division, death and decline the language has survived. This generation has a choice between turning our back, rejecting the language or taking a small measure, making a gesture which could ensure that the language not only survives but flourishes moving into the future.

We have heard from many politicians, parties and commentators over the last 14 months that the Irish language belongs to us all, and so it must be protected for all. The Irish Language is an integral part of this society and until that is recognised officially, and until the appropriate provisions are in place, provisions recognised internationally by experts, the efforts to secure an independent Irish Language Act will not cease.



**Ciarán Mac Giolla Bhéin**

**An Dream Dearg / Conradh na Gaeilge**

# The Impact of Brexit on Children and young people

Since the EU referendum in June 2016, the Children's Law Centre (CLC) have been working to ensure that the potential serious adverse impact of Brexit on children is fully addressed in the Brexit negotiations. CLC have been advocating for children's voices to be heard to inform negotiations, no roll back on existing children's rights protections, a recognition of the need to future proof children's rights against international standards and the need to protect the integrity of the Good Friday Agreement, including the need to ensure the equivalency of children's rights protections in both jurisdictions on the island.

Brexit will have significant implications for all sections of the population. It is children and young people who will be disproportionately affected by Brexit as they will live with the consequences for the longest time. It is therefore regrettably that young people did not have a vote in the Brexit referendum, nor was the impact on their lives and on their rights engaged in the debate.

CLC's work on Brexit has been multi-faceted. We have consulted diverse groups of young people about Brexit, to better understand their concerns and priority issues are. This is what we learnt.

Some young people are angry that they did not get to vote in a decision that will impact their lives and will dominate the political landscape for a long time. They are scared for their future.

Some feel that they have been lied to in relation to Brexit, what it meant and what it will mean. Some are scared that Brexit will mean no rights, no jobs and no opportunities for them in the future and are worried that Brexit gives people the excuse to be racist, intolerant and discriminate against others. Some have queried what protections there will be for migrants living here once we leave the EU. Some feel that Brexit has polarised Northern Ireland and they are afraid to voice their opinions with their peers and afraid that we have "taken 100 steps back and we are heading towards the dark days of the Troubles once more". One young woman commented that: "The issue of remain versus leave has been divided down traditional green and orange lines - this has raised tensions within friendships". A lot of young people said they would leave N.I. if those tensions worsened. A very small minority welcomed the Brexit vote.

Young people we have spoken to recognised the need for a bespoke solution for Northern Ireland to ensure there is no return to a hard border and that children can continue to access healthcare and education services across the border post Brexit. They were also keen to ensure that opportunities and protections such as ERASMUS and the European Health Insurance Card remain. Young people also asked what EU rights those who held Irish Passports would enjoy and how that might differ from the rights enjoyed by those with a British passport. To determine the potential impact of Brexit on children CLC have also been scoping the interface between EU law, policy, funding and practice and how it impacts on the lives and rights of children. To that end CLC and the Children's Rights Alliance (Dublin) through PILA (Public Law Interest Alliance) and the PILS (Public Interest Litigation) Project engaged A&L Goodbody solicitors to consider some of the legal aspects of the impact of Brexit on the rights of children and young people across the island of Ireland.

A&L Goodbody's report (<http://bit.ly/2pe3PFq>) considers some of the implications of Brexit for children in respect of the Common Travel Area, citizenship and movement, family law and the movement of children and families, education, health, protection of children and children and criminal justice.

CLC have also been working with children's rights organisations in England, Scotland and Wales to put forward amendments to the European Union (Withdrawal) Bill such as the incorporation of the UN Convention on the Rights of the Child (UNCRC) and engaging with decision makers in Westminster, Dublin and Brussels to help ensure that children's rights and the Good Friday Agreement are protected through the Brexit process.

**Claire Kemp, CLC**

## Letter from B'Tselem on the Nariman Tamimi case

Dear friend,

Last month, a military judge approved the prosecution's request to remand 'Ahed and Nariman Tamimi in custody.

The key measures that Israel is using against 'Ahed and Nariman Tamimi are familiar – to varying degrees – from thousands of other legal cases Israel has pursued against Palestinian defendants: Violent arrest in the middle of the night, slapdash indictments and prolonged detention leading to remand in custody for the duration of the proceedings. A detainee in remand is not serving a prison sentence and must be presumed innocent until proven guilty. The fact that these measures are being used against a minor magnifies the violation of human rights that is already par for the course in Israel's treatment of hundreds of Palestinian minors: According to Israel Prison Service statistics, as of 30 November 2017, 181 Palestinian minors were being held in custody for the duration of legal proceedings in their cases.

This is standard practice in the military apparatus euphemistically known as Israel's courts in the West Bank: On one side are the Palestinian defendants, in this case, Ahed, Noor and Nariman Tamimi, subjects of Israel's military occupation. On the other are the prosecution and the judges, who are always military officials, i.e. part of the very system that runs the lives of all Palestinians living in the Occupied Territories. The military orders – which establish what a Palestinian can and cannot do – are all written by Israeli officers and reflect what they believe to be protection of Israeli interests, to the total exclusion of the Palestinians themselves, who are denied the ability to influence the content of the orders that dictate all aspects of their lives. This reality is what Israel's military courts refer to as "the rule of law".

When an entire system mobilizes to humiliate and punish a 17-year-old girl because she "has no fear", we - the citizens in whose name this system operates - are presented with an excellent opportunity to, once again, state the obvious: If Ahed Tamimi were Jewish, the chances of her being arrested would have been negligible; only Palestinians are tried in Israel's military courts in the West Bank; the conviction rate in these courts is almost 100 percent. Behind this carefully staged charade, cloaked in well-reasoned legal verbiage, lies one of the occupation's most injurious apparatuses. Its goal is not to seek justice or truth, but to maintain Israeli control over the Palestinian people.

Amit Gilutz

B'Tselem Spokesperson



**Nariman Tamimi**

B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories works to end Israel's occupation in acknowledgment of the fact that ending the occupation regime is the only way to forge a future in which human rights, democracy, liberty and equality are ensured to all persons living between the Jordan River and the Mediterranean Sea.

## Civil Liberties Diary - January/ February

### 10th January

Stormont officials have faced renewed calls to provide audio-recording equipment for Personal Independence Payment (PIP) assessments following criticism of the Department of Communities (DfC) who had previously asked claimants to purchase their own equipment. The move to record assessments was recommended by a review of PIP in Britain following widespread complaints about the process.

### 15th January

Plans to build a new mental health inpatient facility in Omagh have been frozen following Northern Ireland's political deadlock. The plans for the facility were approved by the former Health Minister Simon Hamilton in March 2016. However, due to lack of funding, the Western Trust has confirmed that is unable to progress with the project.

### 17th January

The Equality Commission has called for gender pay gap reporting to be urgently extended to Northern Ireland. In Britain, large employers are required to publish their gender pay gap figures. However, similar regulations have not been enforced in Northern Ireland due to the absence of a functioning executive at Stormont.

### 8th February

A review of Personal Independence Payment (PIP) cases is to be carried out in Northern Ireland following a

court ruling which labelled the system as discriminatory. This follows a High Court ruling in London in December in which changes to PIP were unfair to people with mental health conditions. Stormont's Department for Communities stated it would amend the legislation in Northern Ireland.

### 15th February

A 14,000 signature petition calling for a change to Northern Ireland's marriage laws was delivered to Stormont by teenage activists. The petition was delivered to the offices of Northern Ireland Secretary Karen Bradley and calls for a change to the ban on gay marriage. The ban on gay marriage has been one of the key disputes that has divided Sinn Féin and the DUP following the collapse of power-sharing at Stormont.

### 20th February

Laws designed to tackle domestic abuse in Northern Ireland have stalled due to the Stormont impasse. Draft measures designed to address coercive or controlling behaviour and the responsibility to disclose whether a partner has had a history of violence have not been introduced. This follows an increase in the reporting of emotional abuse to police.

### 21st February

Same-sex marriage in Northern Ireland could be introduced by Westminster. Secretary of State Karen Bradley has said that while same-sex marriage remained a devolved issue, it could be introduced by Westminster if the matter was raised at UK

Parliament as it is the government's policy to allow a free vote on matters of conscience.

### 22nd February

Queen's University Belfast and Ulster University have taken part in an unprecedented level of industrial action following proposed pension changes. The action is part of a nation-wide strike that will affect 61 institutions across the UK. The proposed pension changes have the potential to amount to a £200,000 loss for the average lecturer over the course of their retirement. The University and Colleges Union (UCU) has a mandate to take action until July 19, however the UCU has called for universities to work with the union to reach an agreement and minimise disruption.

*Compiled by Sinead Burns from various newspapers*

## Just News

Just News welcomes readers' news, views and comments.

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