



Will New Decade, New Approach implement the rights commitments of the peace settlement?

The British and Irish governments published 'New Decade, New Approach' (NDNA) on 9 January 2020. On this basis, power sharing was restored to Northern Ireland. CAJ, UNISON, and the broader membership of the Equality Coalition quickly begun analysis of the NDNA document and its accompanying draft legislation. Two detailed briefing papers on NDNA are now available on the CAJ website. You can access both here: <http://bit.ly/31ofgw1>.

In 2019, the Equality Coalition developed and promoted a manifesto outlining the conditions needed for a 'rights based return' to genuine power sharing in Northern Ireland. The Equality Coalition also engaged directly in the negotiations to restore power sharing.

On the face of it, NDNA contains many positive measures in relation to equality and rights. NDNA establishes for the first time in 14 years (since the St Andrews Agreement) a formal process to take forward a Bill of Rights for NI. The passing of an NI Bill of Rights was a significant component of the 1998 Good Friday Agreement (GFA) so it is to be welcomed that this is back on the agenda. However, the process to formulate the Bill of Rights that is set out in NDNA departs significantly from what was originally outlined in the GFA. Instead of the NI Human Rights Commission (NIHRC)

providing advice on the bill's content, an Assembly Committee will inform deliberations, with a panel of five experts established to assist it.

NDNA puts forward reforms to the controversial 'Petition of Concern' (PoC), with the stated intention to return the Petition to its original purpose under the GFA. This is, however, only partially achieved. Originally, it was intended that an Ad Hoc Equality Requirements Committee would be established any time a PoC was tabled to ascertain if the piece of legislation under scrutiny offended human rights (with reference to the terms of the ECHR and NI Bill of Rights). However, it remains ambiguous if the formation of such a committee is now a mandatory part of the PoC process. Whilst reform was discussed in the negotiations to restore power sharing, it appears this has been watered down in light of DUP objections. Nonetheless, there has been some improvement. Better structures and processes now surround the use of the Petition of Concern, including support being required from at least two parties before a PoC can be triggered.

There is an outline Programme for Government (PfG) in NDNA. This contains a list of strategies that the NI Executive will adopt. Among these are three strategies which, further to the St Andrews Agreement, there was a pre-existing legal duty to introduce - namely an Anti-Poverty Strategy, Irish Language Strategy, and Ulster Scots Strategy. Whilst it might sound self-evident that such strategies be included given that they are outstanding legal

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obligations, none have been taken forward previously, despite the St Andrews Agreement being made in 2006. Their explicit inclusion is therefore important. There are also commitments to a Childcare Strategy and Child Poverty Strategy, both of which could compliment the Anti-Poverty Strategy. Additionally, a number of equality based strategies are to be taken forward, including a Racial Equality Strategy; Disability Strategy; Gender Strategy; Sexual Orientation Strategy; Active Ageing Strategy; and Children and Young People's Strategy. This is all very positive on paper, but experience shows that the inclusion of such provisions does not mean they will be implemented.

There are specific commitments on workers' rights in NDNA, including the banning of zero hours contracts. There is also a commitment to bring forward an Age, Goods and Facilities and Services Bill to ensure no-one is discriminated against because of their age - this was previously blocked by the DUP for under-16s. The outline PfG also contains commitments for 'ending sectarianism', pledging an "enhanced strategic focus".

The deal also presents the outworkings of the British government's review of the issues dealt with in the Emma DeSouza case. In a nutshell, NI-born Irish citizens were being treated as British in order to prevent their access to certain EU rights that would allow them to be joined by (non-EU) family members. The UK in NDNA concedes that, in accordance with the GFA, Irish citizens in NI should not be treated as British against their will, and states that a new scheme for family reunification will be introduced, roughly mirroring the entitlements of Irish citizens in the UK. However, family reunification rights for Irish citizens in the UK are presently dealt with under EU law, which will be 'switched off' by Brexit. It is therefore unclear exactly what this new promised provision will consist of (if anything).

As mentioned overleaf, draft Assembly legislation was published alongside NDNA, all of which focuses on language and culture. This is comprised of three separate NI Assembly bills to establish: the Office of Identity and Cultural Expression (OICE); an Irish Language Commissioner; and a Commissioner focusing on Ulster Scots and Ulster British language, arts and literature.

The Office of Identity and Cultural Expression will oversee a new statutory duty on NI public authorities on cultural and linguistic diversity. This is centred on two key principles:

(a) the need to respect the freedom of all persons in Northern Ireland to choose, affirm, maintain and develop their national and cultural identity and to celebrate and express that identity in a manner which takes into account the sensitivities of those with different national or cultural identities and respects the rule of law;

(b) the need to encourage and promote reconciliation, tolerance and meaningful dialogue between those of different national and cultural identities in Northern Ireland with a view to promoting parity of esteem, mutual respect and understanding and cooperation.

Notably, the duties thankfully depart from the subjective formulation of undefined concepts such as 'good relations', and are largely centred on concepts that have a direct link to international human rights standards. The only term that merits further interpretation is the reference to the 'sensitivities' of others. Freedom of expression cannot be objected to on the basis of prejudice or intolerance of others, but can be limited if it unjustifiably interferes with the rights of others.

The second bill, on the Irish language, is more limited than what was previously committed to within the St Andrews Agreement. However, it does contain significant positives. Notably, the bill follows a model of appointing an Irish Language Commissioner and takes an approach centred on best practice language standards for public authorities. This is a strong and robust institutional model based on Welsh language legislation, although the powers are much weaker. The bill provides an appropriate structure that could be effective if not actively frustrated. Its weakness relates to the potential for political interference to disrupt the intended role of the best practice standards. The bill's successful operation therefore depends on a new approach being taken by those who have previously obstructed Irish language provision.

The final bill establishes a Commissioner to promote language, arts and literature associated with the Ulster Scots and Ulster British tradition. Their functions will encompass increasing awareness of Ulster Scots services in NI, as well as providing advice and guidance to public authorities on enhancing Ulster Scots / Ulster British language, arts and literature (this appears to be the only function related to the Ulster British remit). The Commissioner will also have a duty to advise on Ulster Scots in relation to several human rights instruments (a role that appears to overlap with the functions of NIHRC). NDNA separately also provides for UK recognition of Ulster Scots as a national minority under the Framework Convention for National Minorities (FCNM). However, it is not clear if this refers to Ulster Scots speakers as a linguistic minority (something which they are already recognised as) or, alternatively, as an ethnic group.

There are a number of measurable deadlines set in NDNA in the form of dates for implementation. Compliance and timely delivery will therefore be key measures in ascertaining whether a 'new approach' has truly been adopted in practice or if, instead, the delivery of long standing rights based commitments contained within the peace settlement will continue to be frustrated.

Farewell to Liz McAleer

With heavy hearts, the CAJ team will soon bid goodbye to Liz McAleer, our Office Manager and longest serving staff member, who is retiring at the end of March 2020. This will mark a huge change for CAJ. Liz is the embodiment of the organisational memory of CAJ and in many ways exemplifies its spirit, especially through her excellence and diligence in the pursuit of human rights. She has played a key role in CAJ's story over the last thirty years, contributing far more to our organisation than it is possible to explain in a single article. At one point, she was even responsible for compiling Just News! We will sorely miss Liz, but we all wish her well in what we are sure will be an active and very happy retirement.



A goodbye message from Liz:

"By March 2020, I will have been in CAJ for 30 years and have decided to take this time to mark my retirement. It's interesting to note though that I started on a one-year temporary contract back in 1990. Throughout my time, I have worked with kind and passionate human rights activists, for example the late Stephen Livingstone, the late Donall Murphy, and the late Inez McCormack.

"I have made lifelong friends with previous and current staff (too many to mention here) and with those who have been long term volunteers, such as Rose Perry, Jeanette Murtagh and Fiona Cash to mention but a few. I have been involved in the production of three editions of the Civil Liberties Handbook, the creation of the 'Quilt for Beijing', helped with various office moves, played 'Mummy' to numerous EIRENE volunteers, coordinated the internship programme, and more recently been part of the building management group at Community House [where CAJ is based]. Apart from this, I guess I have helped keep the office's engine greased!

"So, in March it will be the end of something extremely memorable and also the beginning of a new chapter in my life. I wish to thank Brian and the Executive Committee for the friendship and support over the years. I know CAJ is in great hands with the current team - Gemma (who will take over as the longest serving staff member at 10 years), Daniel, Robyn, Úna and Eliza. I would like to wish the organisation every success in the future."



Sectarianism: The Key Facts

Dr Robbie McVeigh, Independent Researcher

In its *New Decade, New Approach* programme for government, the new Executive at Stormont commits itself to 'end sectarianism': "There will be a focus within the Programme for Government on ending sectarianism and robust supporting strategies and actions will be put in place". There is also a more detailed section in the Programme for Government under the heading of 'Ending Sectarianism'. This is, of course, a bold and laudable objective. It echoes a similar aim in last year's *Sectarianism: A Review* – which emerged from outside of government but was given a great deal of political and public sector endorsement. But the notion of 'ending sectarianism' obviously begs a couple of questions. First, what is to be ended? How is sectarianism to be defined and measured? Second, what would signify the point at which Northern Ireland was free of sectarianism? Certainly, any attempt to 'end sectarianism' must address the reality of sectarianism institutionalised across the NI state for the last 100 years. Moreover, it needs to frame anti-sectarianism as a project that is primarily about *equality* rather than *good relations*.

Last year, I was commissioned by the Equality Coalition to research contemporary sectarianism in NI. The resulting report, *Sectarianism: The Key Facts*, was published in February 2020. It begins by exploring the increasingly accepted notion that sectarianism is a form of racism. From this perspective, the categories 'Protestant' and 'Catholic' are best understood as ethnic labels. This is already the *de facto* approach in Northern Ireland where 'community background' is an ethnic categorisation, not an indication of faith. Thus sectarianism – like antisemitism and Islamophobia – is properly situated within an overall commitment to ethnic equality. This approach encourages a focus on the structural, institutionalised aspects of sectarian inequality in Northern Ireland. My choice of title (*Sectarianism: the Key Facts*) gives some sense of the project: it suggests that sectarianism cannot be understood in terms of 'perceptions', but should instead be understood in terms of an evidence base. This evidence base *was* fairly clear a generation ago. When direct rule was imposed in 1972, the egregious sectarian inequality that had characterised the NI state since its inception was hard to deny and the British government put a series of measures in place that were certainly designed to mediate the most egregious examples of sectarianism, even if they weren't intended to 'end sectarianism'.

As is pointed out in *Sectarianism: The Key Facts*, the civil service is perhaps the paradigm example of this intervention. After partition, the civil service under Stormont had been characterised by an explicit desire to ensure that there wasn't a Catholic about the place. This changed under direct rule and today – more or less – the civil service is an example of a 'fair employer'. More generally, there has been a 'convergence' of Protestant and Catholic experiences over the past 50 years, generated first by direct rule and second by the outworking of the Good Friday Agreement (GFA). So,



there is no doubt that some equality interventions have worked and those who worked towards this end must take credit for this. At the same time, however, suggesting that things are less bad is not the same thing as suggesting that they are resolved. There is some way to go before anyone could suggest that the sectarian disparities embedded across the state have been 'ended'.

The legacy of institutionalised sectarianism in infrastructure and planning throughout the state casts a long shadow across contemporary Northern Ireland. In other words, sectarian discrimination is a *legacy issue*. Crucially, the historical decision to develop the 'Protestant' east and under-develop the 'Catholic' west continues to impact negatively in the present in a sectarian way. Moreover, the continuing sectarian 'dual markets' in employment, housing and education across the whole of Northern Ireland provide a stark reminder of just how far it will have to travel before sectarianism is ended.

Within *Sectarianism: The Key Facts*, it is suggested that any discussion of ending sectarianism must take place against the backdrop of a profound *demographic transition* in Northern Ireland. The sectarian algorithm that set the tone between 1972 and 1998 was of a two-thirds Protestant and one-third Catholic population, in which Catholics were, more or less, disadvantaged across all major indices. Moreover, it was generally accepted that this widespread disparity was a consequence of sectarian discrimination. This context has transformed over recent decades. Now Catholics form the plurality in most relevant datasets - i.e. in schools, among people of working age, and among families waiting to be housed (even in Belfast itself). In addition to this profound shift, the 'Other' category (incorporating people who cannot be shoehorned into traditional Protestant and Catholic boxes) now forms around 20% of the overall NI population. In other words, any analysis that reduces ending sectarianism to 'community relations' between Protestant and Catholics is now wilfully wide of the mark in terms of the demographics of contemporary Northern Ireland. More positively, however, the new demography moves anti-sectarianism away from something that is only of benefit to Catholics. In a society with these three key sectarian ethnic blocs (Protestant, Catholic, 'Other'), we often find three minorities all with

equality concerns and all needing the protection of robust anti-sectarian intervention. This new complexity also reminds us of the need for a new sensitivity to *intersectionality*. Sectarianism is lived through class, gender and other structuring identities. Any intervention and any data must reflect these key differences.

Thus, despite much good work, there is no doubt that attention to sectarian inequality has lost focus over recent years. For example, the NI Human Rights Commission (NIHRC) recently published an analysis of the impact of reforms to the tax and social security system in NI (Reed and Portes 2019). This report failed to provide *any* analysis of sectarian impact, though the authors do recognise within the text that the “omission of analysis by religious belief is particularly unfortunate in a Northern Ireland context due to the relatively high degree of religious segregation in many facets of Northern Ireland life including education and social housing” (Reed and Portes 2019: 34). The report goes on to explain that the omission in relation to sectarian inequality relates to the official data sets on which the methodology relies. Namely, the Family Resources Survey (FRS) and the Living Costs and Food Survey (LCF). It is not that these surveys do not gather data on religious belief, *but rather that the data is not currently made available*. Accordingly, among the report recommendations is a change in government policy to allow analysis of “the distributional impact of tax and social security reforms by religious community, which is particularly important in the socio-economic and policy context of Northern Ireland” (Reed and Portes 2019: 143).

In truth, however, fifty years after the Fair Employment Act and over twenty years after the GFA, it beggars belief that this data is not provided routinely. Whatever the intent behind this example, the reality is that the contemporary state is now often covering up rather than illuminating sectarian disparity. It is impossible to ‘end sectarianism’ without an evidence base that would allow us to decide when that is to be achieved.

Beyond this, however, *Sectarianism: The Key Facts* also highlights example of *continuing* sectarian discrimination. Drawing on key areas of work by CAJ, the research confirms the evidence of recent discrimination. Examples include the (later overturned) decision to withdraw Liofa funding; the Community Halls Programme; housing not being allocated based on objective need; and failings in Irish language policy. Sectarian inequality remains a live and politically charged issue. The only effective response to this reality is a robust anti-sectarian recommitment to sectarian equality.

Appropriately, given its title, *Sectarianism: The Key Facts* finishes on a series of ‘key facts’ by way of conclusion. First, contemporary sectarianism in Northern Ireland is structured by an ongoing demographic transition. The Catholic/Protestant/‘Other’ sectarian ratio is changing and this in turn profoundly transforms the way in which sectarian equality and discrimination is both lived and understood. Second, sectarian disparities have reduced significantly in key areas like employment and housing and education. There has been a significant convergence between the Protestant and

Catholic communities over the past 50 years, but this is often explained by a ‘balancing’ of inequality rather than the delivery of equality. Third, significant differences and inequalities between Protestants and Catholics remain across a range of indices. The continuance of a ‘dual labour market’, a ‘dual housing market’, and a ‘dual education market’ provides some sense of how profoundly sectarianism remains institutionalised across Northern Ireland. Fourth, sectarian differences and inequalities continue to be explained, at least in part, by historical and contemporary discrimination. All of us – including the new Executive – must guard against new forms of sectarian discrimination. One such example – the Liofa decision mentioned above – contributed to the breakdown of the previous power sharing government and it is crucial that this kind of discrimination does not happen again.

Finally, *Sectarianism: The Key Facts* makes a key recommendation in terms of a different framework for tackling sectarianism. There is a useful template in the recent ‘Race Disparity Audit’ intervention, which was put forward by the last Conservative government. Launching this audit, Theresa May, the PM at the time, said that she was “challenging society” to “explain or change” disparities in how people from different ethnic backgrounds are treated. She suggested the audit would become an “essential resource in the battle to defeat ethnic injustice”. The UK state should similarly strive to make such an audit an essential resource in tackling injustice in Northern Ireland. Here there is every need for a similar ‘Sectarian Disparity Audit’ that would present the baseline data on sectarian disparity and then insist that different government departments, as well as ‘society’, explain or change disparities between those with Catholic, ‘Other’ and Protestant backgrounds.

Whatever the ongoing balance of Protestant and Catholics and ‘Others’ within the state, sectarianism remains the central algorithm of inequality in Northern Ireland. If we are serious about ‘ending sectarianism’, we need a re-centred approach, focused on a commitment to promote the equality and human rights of all citizens who meet at the interface of sectarianism. At the core of this approach is the recognition that tackling sectarianism is about building a more equal future, rather than trying to reconcile people to a present that remains contested, unequal and profoundly sectarian.



Sectarianism: The Key Facts is available for download from the CAJ website: <http://bit.ly/2OYfjc0>

Human rights as a guide to action in conflict resolution

Brian Gormally, Director, CAJ

Most of those participating in conflict resolution at least pay lip-service to human rights. In fact, it is common for groups who are themselves involved in conflict to claim to be fighting for human rights. Of course, some of the partial co-option of human rights ideas by combatants amounts to a clearly cynical abuse of the standards for propaganda purposes. In other cases, however, there is a genuine affection for human rights, but they are seen as a far-off utopia or the icing on the cake of a successful settlement. The 'real' business of conflict resolution is viewed as being about doing deals, the modalities of negotiations, and so on.

In contrast, we would argue that, while a rights based society is a goal – and often a far-off one – human rights standards can also be used as a guide to action, providing a direction of travel, certainly, but also a methodology in the process of conflict transformation. Human rights are not a replacement for politics and programmatic action, but they are an indispensable benchmark. No political programme that contravenes human rights standards will, in the end, achieve the willing and informed allegiance of humanity.

The preamble to the Universal Declaration of Human Rights (UDHR) states, "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law". The clear meaning is that tyranny and oppression (a lack of human rights) leads to insurrectionary violence. In this sense, we could argue that a durable peace is not just the (temporary) absence of violence, but a state based on human rights protected by the rule of law.

The most fundamental characteristic of human rights is their universality – they accrue to all people in all circumstances by simple virtue of their humanity. That outstanding feature gives them their practical strength as well as their moral power. Human rights are the enemy of all forms of prejudice and discrimination. They are not relativist or contingent, but apply to all cultures and all circumstances. They are not comparative. The fact that worse violations occur elsewhere does not excuse any level of violation.

Specific application to conflict resolution

The concept of human rights goes back centuries but it was after the Second World War that they were practically codified. International human rights law is found in a series of treaties and covenants, signed up to by sovereign states, which then can be used to hold the state to account. At a legal level, it is only these state signatories that can be in breach of their obligations and so carry out



human rights abuses.

Sometimes presented as a weakness of the human rights approach, this is in fact a strength as it means the state must be the main protector of human rights. The state has negative obligations not to abuse people's rights, but also the positive obligation to protect the human rights of all people under its jurisdiction. It does this through the rule of law (the state's legislature, courts and enforcement mechanisms). In urging the state to apply human rights standards, we are hoping both to reduce direct human rights abuses by the state and also to increase its effectiveness in protecting people from harm from other people. Human rights can therefore be seen as setting the framework for relations between people and people, as well as between people and the state.

Furthermore, as stated in the preamble to the Universal Declaration of Human Rights, "every individual and every organ of society" should "strive...to promote respect for these rights and freedoms". In this sense, the obligation to uphold and promote human rights is not restricted solely to states. The point being that, even though a human rights approach focuses on the state, it also works for the benefit of the whole of society.

Human rights are absolutely central to the process of moving from conflict to a new society. We may, of course, have different views on the causes of any particular conflict. We may differ about the extent to which human rights abuses by the state caused, or were a reaction to, violence committed by non-state armed groups. That they existed and needed to be remedied is, however, hardly to be denied. As well as armed groups desisting from violence and 'going away', the state also needs to be reformed.

From a human rights point of view, the first point of engagement with a violent political conflict is in relation to human rights abuses by the state. This intervention is not simply about the harm done to the victims of abuses, but also about the corrosive effect on the rule of law. Abuses delegitimise the state and, in particular, the criminal justice system, thereby weakening its ability to impartially uphold the rule of law and leading to a catastrophic failure

in the state's duty to protect its citizens. A human rights approach to conflict transformation and peacebuilding first involves the identification, investigation and accountability of human rights abuses; second a process of fundamental reform of the state and its institutions to prevent reoccurrence of the abuses; and, third, the construction of a society based on justice and equality in order to remove the causes of conflict.

It is, of course, accepted that every conflict is unique. A 'one size fits all' approach will not work. In arguing for a consistent human rights based approach, we need to articulate principles that can help when applied to the particular characteristics of a situation. Let us look at some of the accepted principles of human rights standards in this light:

Interdependence of human rights is a basic principle. The argument being that any particular area of human rights protection is weakened by the lack of another. There should be no cherry-picking, no appeal to cultural relativism. That does not mean to say that particular aspects cannot be prioritised depending on circumstances, but one right cannot be traded for another. In the real world, you cannot have human rights compliance in one area combined with gross abuses in another. What contemporary culture, for example, has exemplary characteristics of the rule of law and protection of civil and political rights, yet restricts and violates the rights of women?

Empowerment starts with a recognition that people in society have rights and entitlements that give rise to legal obligations on the part of others. This is not just a question of need, but of moral and legal rights whose violation is both wrong and unlawful. If we accept the concept of deprived people as rights bearers, the implication is that we must strive to further empower such people, seeing them not as victims, but as standard bearers in the struggle for human rights.

Participation is the corollary of empowerment as a principle. It emphasises the fact that full participation in all aspects of a society is itself a human right, which cannot be achieved if it is not recognised as part of the process. Encouraging the participation of rights bearers should always be a defining characteristic of a human rights approach to conflict resolution.

Accountability is a crucial characteristic of a rights based society. Rights imply duties, and duties demand accountability. An intrinsic feature of the human rights approach is ensuring that accountability is built into any peace settlement. Furthermore, agencies and groups which purport to be actors in the process of conflict resolution, but which accept no accountability to standards or institutions outside of themselves are unlikely to be productive partners.

Non-discrimination and equality are basic human

rights, underpinning all others. This is because the essence of human rights is that they are universal and apply to everyone by virtue of their simple humanity. Any breach of the equality principle therefore undermines the moral or normative basis of all human rights. Furthermore, any form of discrimination is an assault on human dignity and self-worth. Equality is essential for attitudinal change processes such as reconciliation, which otherwise risk simply legitimising the status quo.

Conclusion

Our basic argument is that human rights standards represent both a goal of conflict resolution and a set of principles that should inform the process. While a human rights approach will not create a perfect society, it will put limits on its imperfections. As a method, a human rights approach has a range of specific applications. It has already led to the development of the concept of transitional justice (i.e. the process of transition within a society from violence and lawlessness to rights and the rule of law, which has been informed and checked throughout by reference to human rights standards).

If we look specifically at the often fraught matter of engaging with illegal or non-state armed groups, a human rights approach starts off with the vision of the human as a rational being "born free and equal in dignity and rights...endowed with reason and conscience" (Article 1, UDHR). This principle of rationality refuses to dehumanise or pathologise anti-state combatants. It opens up an exploration of their reasons for violence and can encourage the discussion of what human rights protections might remove them. In other words, the possibility of a political, non-violent solution.

Likewise, relations between international and local actors in conflict resolution can benefit from a human rights approach since it offers two-way accountability based on common standards.

With regards to peace and conflict impact assessment, we would suggest that developing appropriate indicators and thoroughly evaluating prospective and past interventions can benefit from a human rights approach to benchmarking based on universal values.

In the end, human rights can easily be derided for ignoring *realpolitik* and depending on high standard laws, courts and policing, which are absent in most conflict situations. In response to this, we would argue that human rights are all about regulating power relations and championing rights bearers against power holders. Furthermore, although the rights based society underpinned by the rule of law is the goal, all human institutions ultimately depend on people's support. The rule of law can only be built by a mobilised people using human rights principles to fight for and eventually achieve their goal.

Challenging the equality screening of the proposed abortion framework policy

Eliza Browning, Equality Duty Enforcement Project (EDEP) Coordinator, CAJ

In November 2019, the Northern Ireland Office (NIO) published a new policy entitled 'Provision of a new legal framework for accessing abortion services in NI'. This policy was open for consultation until 16 December 2019, and included the equality screening of the policy, which determined that the NIO would take forward a full Equality Impact Assessment (EQIA) based on the findings in the screening which concluded:

1. A 'minor' 'impact' on Good Relations in the category of Religious Belief;
2. A 'minor' 'impact' on Good Relations in the category of Political Opinion;
3. A 'minor' impact on Equality of Opportunity in the category of Religious Belief.

Ordinarily, if CAJ and the Equality Coalition are concerned about a screening, it tends to be because adverse impacts have been 'screened out', leading to a flawed conclusion to not proceed to an EQIA. However, in this case, it was important that the decision to *proceed* to an EQIA be reviewed, as it was not made in line with the purpose and rationale for the use of an EQIA, as stated in the NIO's own equality scheme (and also in guidance from the Equality Commission for Northern Ireland). Therefore, CAJ and other Equality Coalition members submitted a screening decision review request to the NIO on 11 December 2019, requesting that the NIO review their decision to proceed to an EQIA.

Equality screening should determine if there are any adverse impacts on the equality of opportunity of the protected groups as a result of the proposed policy. The concept of 'adverse impact' has a defined meaning similar to discriminatory detriment. 'Minor' adverse impacts are typically identified and mitigated against, and 'major' adverse impacts act as a trigger for a more comprehensive assessment of the policy's impact through the process of an EQIA.

In our screening decision review request, we argue that the rationale for almost all of the identified minor adverse impacts is flawed and therefore the decision to proceed to an EQIA should be reconsidered. Limiting an equality promoting policy because it 'impacts' on good relations on religious and political grounds is contrary to the purpose of the statutory duty.

1. 'Minor' adverse impact on Good Relations under

Religion: In the Screening, the NIO state that there is a 'minor' adverse impact on good relations because 'a broad range of religious organisations are critical of abortion'. Having a religious belief that is critical of a policy does not mean that there is an 'impact' on the level of good relations between people of different religious beliefs as a result of the policy. Just because someone of a certain religious belief does not like a policy, it does not necessarily follow that the public authority is not complying with the good relations duty. "Good relations" has never been defined in legislation for Northern Ireland, but the same concept is defined in legislation in Great Britain as specifically concerning "tackling prejudice and promoting understanding" on protected equality grounds. In Northern Ireland, there are only three protected grounds (religious belief, political opinion and racial group) meaning the duty essentially focuses on tackling sectarianism and racism.

The good relations duty should not be interpreted as being 'breached' if a policy is opposed by some political or religious beliefs. Such an approach would render all policies that were politically contested - even those promoting equality - as having an 'adverse impact' on the Section 75 duties, thus undermining their purpose. In general, CAJ has been critical of the use of the screening to identify 'impacts' on good relation grounds because the Northern Ireland Act 1998 requires public authorities to only assess compliance with the duty to promote good relations. The requirement on public authorities to assess the impact of policies only relates to the equality of opportunity duty. In our screening decision review request, we acknowledge that the NIO has adopted an equality scheme that makes reference to good relations impacts, and has done so with the blessing of the Equality Commission for Northern Ireland. We have strongly contended for some time that this is the wrong approach.

2. 'Minor' adverse impact on the good relations

between people of different political opinion: The NIO determined that there was an adverse impact on good relations because there "will be a range of views on abortion...across the political spectrum in Northern Ireland". It is a misinterpretation of the good relations duty that political opposition to a proposed policy constitutes an 'adverse impact' that should trigger an EQIA. For example, this type of approach would mean that a public authority would have to commission an EQIA on good relations grounds when a person holding a political opinion of climate

science denial opposes a policy on reduction of fossil fuel use. This is clearly not the purpose of the statutory duties.

3. 'Minor' adverse impact on the equality of opportunity under Religious Belief: In our screening decision review request, we argued it was not clear how the NIO arrived at the determination that there is a minor adverse impact on equality of opportunity under Religious Belief. The screening states: "We do not anticipate a differential impact on religious belief." However, the screening then goes on to find a minor adverse impact on grounds of religious belief. This is contradictory. If there is no differential impact, then the level of impact is 'none'. It is not entirely clear what the basis for the finding of minor impact is. If it is grounded simply in concerns by religious/faith organisations that do not create an actual adverse impact on equality of opportunity, then we argue that the finding should be 'none'.

If, however, the minor impact finding relates to conscientious objection and medical professionals, we highlight in the screening decision review request that the screening exercise and consultation already commit to the implementation of mitigating measures to address this.

Conclusion: The current screening decision advocates proceeding to an EQIA largely on good relations grounds. These grounds themselves are erroneous. Opposition and subsequent 'sensitivity' around a policy is not an adequate basis for proceeding to an EQIA, particularly if the policy is intended to ensure compliance with international human rights standards and constitutes a positive impact on a protected equality ground.

We are still awaiting the NIO's response to our Screening Decision Review Request, which you can view in full here: <https://go.aws/2leBtUy>.

OSJI-CAJ Principles and Guidelines on Protest and the Right to Information

On the 13 December 2019, the joint OSJI-CAJ Principles and Guidelines on Protest and the Right to Information were officially launched at an event in Washington D.C. attended by over 100 delegates. Also launched at the same event was a new Inter-American Human Rights Commission (CIDH) report on the right to protest (a detailed soft law instrument)

The event, which was held in Spanish, took place in the CIDH headquarters in Washington on the fringes of the periodic hearings of the Inter-American Human Rights Commission. Originally, the event was meant to take place in 2019 at the previous hearings in November in Quito, Ecuador, but it had to be put back due to the state of emergency declared there at the time.

The audience was comprised of numerous NGO human rights delegations from across Latin American, who were attending the hearings. Also present were ambassadors and other state representatives/actors, including Frank LaRue, a former UN Special Rapporteur, who observed the Drumcree marches in Northern Ireland during the 1990s.

The launch event was opened by the General Secretary of CIDH, before being addressed by Edison Lanza, the CIDH Special Rapporteur on Freedom of Expression, who presented the CIDH report on the right to protest. This was followed by a speech from Clement Voulé, the UN Special Rapporteur on freedom of assembly and association. A second panel featured two NGO representatives reflecting on national situations in Latin America's most populous states - Paula Litvachky from CELS (Argentina) and Camila Marques from Article 19 (Brasil) (see photo above right).



The third panel was chaired by Mariana Más of OSJI, who outlined the OSJI-CAJ principles document. There were then comparative presentations from Daniel Holder of CAJ, focusing on the NI case study of compliance from the principles; and Edy Tabora from C-Libre, outlining the application of the Principles in Honduras. Lengthy audience discussion followed with considerable reflection on the merits of the institutional arrangements in NI following the peace process (particularly the Parades Commission and policing oversight bodies). A number of delegations sought copies of the NI case study document on which the presentation was based.

There was significant interest in utilising the principles as a human rights compliance measurement tool in other Latin American states. CAJ continues to be engaged with OSJI to further develop this area of work. The principles are available online here: <http://bit.ly/2lo6qWs>.

With the first couples already celebrating their marriages, where to now for the Love Equality campaign?

Clare Moore, Equality & Social Affairs Officer, ICTU, & Consortium Member, Love Equality

Tuesday 11 February 2020 marked another milestone in the journey for equality for LGBT+ people and our families and friends in Northern Ireland. On this date, Robyn Peoples and Sharni Edwards celebrated their love by becoming the first same sex couple to marry in NI. They were surrounded by family and friends (and a fair amount of media attention) during the ceremony, which took place in Carrickfergus, County Antrim.

The Love Equality campaign celebrated this momentous day by reflecting on the long journey to marriage equality and also on what has still to be done.

The current position

Section 8 of the Northern Ireland (Executive Formation etc.) Act 2019 required the Secretary of State for Northern Ireland to make regulations, to come into force on or before 13 January 2020, to provide for same sex marriage and civil partnership for opposite sex couples.

In effect, what this meant was that couples wishing to marry could register their intent from 13 January 2020, with the first weddings able to take place from mid-February onwards. It also meant that couples who have been married elsewhere would now have their union regarded as a marriage in Northern Ireland, whereas previously it would have been regarded as a civil partnership. Celebration all round.

What wasn't initially clear, however, was that the provisions would not extend to couples who wished to have a religious marriage, or to couples who wished to convert their existing civil partnership to a marriage.

Whilst acknowledging the historic progress made, Love Equality expressed bitter disappointment that 13 January would not bring equality for all LGBT+ couples in Northern Ireland. We pressed the Northern Ireland Office (NIO) for clarification. In response, NIO confirmed that only new marriages would be covered by the legislation and that the other two matters – conversion of civil partnership to a



marriage, and religious marriage – would have to be subject to further public consultation.

With more than 1,300 civil partnerships having taken place in Northern Ireland since 2005, this was a significant issue for the campaign and a real blow for many couples who thought that they would be able to apply to convert their civil partnerships through a straightforward administrative process. The decision to consult was also disappointing for religious celebrants keen to be able to marry same sex couples in religious ceremonies.

Reacting to the news, Love Equality announced potential legal action against the UK government. Speaking at the time, Cara McCann, Director of HereNI and Love Equality consortium member said: "Our campaign for equal marriage has always been about rejecting second-class citizenship. We have already won our campaign in Parliament. Now we will to go to court to ensure the government does not escape its legal obligation."

Following extensive negotiations with the campaign, NIO confirmed that a consultation on both outstanding matters would be launched early in 2020. Furthermore, they stated their intention to rectify the gaps in the law as early as possible in 2020.

As promised, a consultation on 'same-sex religious marriage and conversion entitlements in Northern Ireland' was held by NIO from 20 January 2020 to 23 February 2020. At the time of writing, the outcome of the consultation had not yet been made public. Love Equality is hopeful, however, that the overwhelming public support for full marriage equality for Northern Ireland will be reflected in the speedy implementation of legislation to ensure that all love is equal.

Love Equality has published information for couples on the current position with regards to marriages, conversions, and more – this can be found here: <http://bit.ly/3apffeB>

You can also learn more about the Love Equality campaign by visiting: www.loveequalityni.org



Gender, Justice and Security Convention in Sri Lanka

In January 2020, CAJ attended an international convention on gender, justice and security in Sri Lanka, a country that like Northern Ireland has a turbulent past, marred by bloody internal conflict.

The convention was organised to bring together the various international partners participating in the UKRI GCRF Gender, Justice and Security Hub. Set up in 2019, the Hub is a five year project that is seeking to advance a sustainable and inclusive peace by developing an evidence-base around gender, justice and inclusive security in conflict-affected societies. Working with international partners, the Hub will amplify the voices of women and marginalised groups, expand research capacity, encourage interdisciplinary research, and create new knowledge and advocacy networks.

The Hub is working with partners around the world, with a particular focus on seven core countries that have each been impacted by recent conflicts. They are: Afghanistan, Colombia, Iraq, Lebanon, Sierra Leone, Sri Lanka and Uganda. Research has already begun by the Hub across a variety of research themes

CAJ is a junior partner in the Hub's Socioeconomic Rights and Transition Project, working closely with Rory O'Connell of the Transitional Justice Institute (TJI) at Ulster University. Our project will focus on examining how socio-economic rights are dealt with in peace agreements. Year one will focus on Northern Ireland, before the project broadens to look at other global contexts. The primary role of CAJ is to lead the development of an NI-specific case study and to facilitate conversations between researchers and civil society groups that have attempted to use the terms of our peace settlement to highlight rights deficits.

The convention in Sri Lanka ran from Wednesday 5 January to Monday 13 January 2020. Its overarching purpose was to bring together the various partners involved in the Hub for the first time to plan joint research activities in the fields of gender equality, peace and justice. Participants also undertook training and attended sessions hosted by local Sri Lankan partners about the work currently being done to achieve an inclusive peace in the country. CAJ was represented by Robyn Scott, our Communications and Equality Coalition Coordinator, who stayed for the duration of the convention and joined every available session.

Representatives attended from across the world. Many individual countries were represented, including the UK, Lebanon, Iraqi-Kurdistan, Colombia, and Uganda. In total, there were around 70 Hub members present so it was an excellent opportunity for everyone to make initial contact with each other, discuss subjects of mutual interest in the context of the Hub, and further develop their research ideas.

Activists, academics and artists from Sri Lanka participated when it was safe for them to do so. However, facilitating this was more difficult than initially anticipated due to recent political changes within the country. Just weeks before the start of the convention, on 16 November 2019, Gotabaya Rajapaksa won a comfortable victory in the presidential election. Rajapaksa is a controversial figure in Sri Lanka. More than a



Convention participants visiting Sigiriya, a famous Sri Lankan fortress

decade ago, he served as defence secretary in his brother Mahinda Rajapaska's administration. In this role, he oversaw the end of Sri Lanka's brutal civil war between government forces and Tamil separatist rebels.

Both sides were accused of committing human rights abuses during the war, which lasted from 1983 to 2009 (though its roots can be traced back much further than this). The conflict was characterised by extra-judicial killings and enforced disappearances. In 2003, the Red Cross stated that it had received 20,000 complaints of disappearances. The 'disappeared' include rights activists, government critics, journalists, and soldiers. By contrast, the conflict in NI is estimated to have led to the deaths of around 3,600 people.

It should be noted that Gotabaya Rajapaksa, and his administration, have strongly denied any involvement in the disappearances (and other rights abuses). Nonetheless, his election was greeted with trepidation by many Sri Lankan rights defenders, who fear it will lead to 'backsliding' on truth, justice and rights.

During the convention, local partners shared their accounts of the Sri Lankan conflict and, in return, members of the Hub from other conflict-affected regions provided insights from their own countries. Robyn spoke about the situation in Northern Ireland, highlighting emerging issues that may affect the peace process, including Brexit and shifting demographics, which could soon see Catholics replace Protestants as the majority community.

The convention also included thematic sessions and lectures on various topics related to gender, justice and security; as well as opportunities for Hub members to engage with Sri Lanka's rich cultural heritage. Many contemporary artists have used their work as a vehicle through which to respond to the Sri Lankan conflict and Hub members had the privilege of hearing directly from a number of these individuals. At the end of the convention, there were two full days of training sessions to aid Hub members in completing their research projects and to give them an opportunity to engage with the faculty at the University of Colombo.

A number of additional Hub conventions will follow on from the one in Sri Lanka, with the next taking place in Lebanon and the last set to be held in NI. Meanwhile, Sri Lanka faces an uncertain future. It is of the utmost importance that the international community continues to do what it can to support and protect the human rights defenders living there.

Civil Liberties Diary - November & December 2019

Compiled by Sinead Burns from various newspapers



8 November 2019: Nurses in Northern Ireland have voted to go on strike over pay and staffing levels. 96% of members voted to undertake industrial action, whilst 92% voted in favour of strike action. It is the first time the Royal College of Nurses have voted to strike in its 103 year history.

15 November 2019: Equal marriage campaigners in Northern Ireland are considering legal action in response to what they see as unnecessary government delays. Same-sex partners will be able to legally marry from February 2020. However, a mechanism has not yet been put in place to allow couples to convert their civil partnerships to marriages.

19 November 2019: A policy paper from an independent think tank has revealed that NI has the highest percentage of children living in long-term workless households in comparison to all other UK regions. 13.6% of children in NI grow up in workless households and are more likely to have lower educational attainment, be unemployed and live in poverty in later

life.

28 November 2019: Healthcare workers staged their first day of strike action in a dispute over pay and staffing. Staff are demanding pay parity between NHS workers in NI and workers in rest of the UK. University staff in NI also began eight days of planned strike action over pay, conditions and pensions. Up to 43,000 members of the University and College Union (UCU) are taking part in the UK-wide strike, which could affect up to one million students. Staff have stated that the increased marketisation of higher education has placed a financial burden on staff and students, and are calling for an increase in public investment in universities.

11 December 2019: Tens of thousands of households in NI are set to see their income plummet following the conclusion of a welfare mitigation package that was designed to offset the impact of UK-wide welfare reforms. The package is due to end in March 2020. A recent inquiry found that without intervention, more than

35,000 households will lose a significant amount of income.

17 December 2019: An anti-abortion group of medical staff have hit out at a 'flawed' consultation on changes to NI's abortion laws. The consultation on a new legal framework for abortion services in NI was launched by the Northern Ireland Office (NIO) in November. The group of medical staff have issued a statement in which they say they are unhappy about proposed provisions for medics who refuse to take part in abortions on the grounds of conscience.

19 December 2019: Politicians have been issued a last minute appeal to the Secretary of State, Julian Smith, to intervene in what has been described as the most critical strike in the history of the NI health service. Around 9,000 nurses have taken part in an unprecedented all-out strike over staffing and pay.

After Brexit: The scope and limitations of the Common Travel Area

Much has been made of the protections offered by the Common Travel Area (CTA) following the UK's exit from the European Union, but will these really be enough to plug the gaps post-Brexit?

To address this issue, CAJ's Immigration Project and the Equality Coalition hosted two roundtable events in January and February 2020 on 'The Scope and Limitations of the Common Travel Area'. These events brought together leading experts from across the island of Ireland to discuss the realities of the CTA and to explore new issues that may arise post-Brexit. The discussions focused on two central themes: Freedom of Movement and the Common Travel Area; and Reciprocal rights and the Common Travel Area.

The first roundtable event was held in Newry and the second in Derry - two border areas where Brexit will have a significant impact. The events were attended by a broad range of participants from both sides of the border, including academics, legal practitioners, councillors, NGO staff members, and business representatives. The first was chaired by Patricia McKeown (UNISON) and the second by Professor Colin Harvey (QUB), with Daniel Holder (CAJ) giving the lead presentation both times.

It is clear from the expert discussion at these events that the scope and provisions of the CTA require urgent clarification, particularly in light of the government's continued reference to the CTA as a 'fix all' post Brexit. There is

widespread uncertainty and confusion in border areas about issues such as reciprocal healthcare, frontier working, and cross-border travel.



These issues are little understood by policymakers and must be brought to the top of the government's agenda urgently. CAJ will use the information gathered through these events to develop a body of work on this issue.

Just News is published by the Committee on the Administration of Justice. Readers' news, views and comments are welcome.

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