

NIHRC Commissioner appointments: Has the Secretary of State read the Paris Principles?

The Northern Ireland Human Rights Commission (NIHRC) is one of the key institutions established under the Good Friday Agreement. It presently enjoys 'A status' as a National Human Rights Institution (NHRI), which means it has previously been judged as in full compliance with the UN Principles relating to the status of NHRIs, known as the [Paris Principles](#), which were adopted by the UN General Assembly Resolution 48/134 of 20 December 1993.

NIHRC compliance with the Paris Principles had already been put under strain by the decade of UK government austerity policies decimating its budget. Principle 2 of the Paris Principles provisions on 'Composition and guarantees of independence and pluralism' requires an NHRI be granted adequate funding. Principle 1 of the same section refers to pluralism of appointments to NHRIs. This was recently put to the test as the new Secretary of State Brandon Lewis MP making appointments to all six Commissioner posts at the NIHRC i.e. every one except the Chief Commissioner post currently held by Les Allamby, whose term runs until next year.

There have been long term general questions about the appropriateness of the Secretary of State ultimately making appointments to the NIHRC. On this occasion, the appointments were also made against the backdrop of a global pattern of populist right wing governments sweeping boards clean. There has already been some suggestion that the UK government may take similar action on the future fate of institutions like the BBC.

The NIHRC appointments were announced on the 1 September 2020 by the NIO, whose statement at the time highlighted the NIHRC's UN 'A status' as an NHRI operating in "full accordance with the UN Paris Principles".

In terms of appointments, the Paris Principles provide that its composition of such bodies "shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of: (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists; (b) Trends in philosophical or religious thought; (c) Universities and qualified experts; (d) Parliament; (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity)."

Whilst the Secretary of State will have had a broader field of candidates to choose from, including the

probable scenario of previous Commissioners who have reapplied for a second term, as well as civil society representatives, there are a number of notable issues with these appointments related to the Paris Principles duties around pluralist composition.

Firstly, the appointments are significantly state-centric. Five of the six appointees have a distinct public sector background. What is particularly notable is that three of the six have a PSNI/RUC (policing) background. Two others have backgrounds in the criminal justice system and health sector. Only one of the previous Commissioners was reappointed. Of the overall total of seven Commissioners, only two are now women. There are no obvious other racial, religious, or cultural groups represented, and, more broadly, there appears to be a dearth of appointments with a background in human rights advocacy.

None of this of course is intended in any way to question the integrity of any of the individuals who have applied and been appointed to the NIHRC. It does however beg the question as to whether the Secretary of State is familiar with and gave any weight to the Paris Principles.

An Irish News [article](#) shortly after the appointments states the NIO had "refused to respond to any additional questions surrounding the new appointments", beyond stating that they were regulated by the Commissioner for Public Appointments and overseen by an independent panel member. The newspaper highlighted that the NIHRC has been "overhauled" months before the Brexit transition, and also referenced the "deep initial concerns" of the NIHRC earlier in the year about the ECHR compliance of the UK government's new NI legacy proposals, as outlined in a Ministerial Statement given by the Secretary of State in March. The introduction of this new NIO legacy bill is likely to be something in the in-tray of the new NIHRC Commissioners before the year is out. It is unfortunate that the independence and diversity of NIHRC may well be compromised by the failure to address the Paris Principle requirements in respect of appointments, a regrettable move for the integrity of human rights protections in NI.



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Black Lives Matter and the fight to end racism in NI

Lilian Seenoi-Barr, Director of Programmes,
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In the middle of a health crisis, the news cycle moves quickly. It is easy to forget that on 25 May 2020, George Floyd – a 46-year-old black Man – was brutally killed when a police officer in Minneapolis knelt on his neck for almost nine minutes while three other police officers looked on. This act of lethal violence was captured on video and sparked outrage around the world leading to global protests and adding fresh impetus to the demand that Black Lives Matter. We watched this video and imagined it was our son, our husband, our brother, our friend. The familiarity and the horror of these images demanded that we raise our voices and demonstrate our anger and pain

But that is the US you might think - it is not like that here. It is important to remember that the condition of black people in Northern Ireland is one of vulnerability, fear, mourning, recognition, and an absurd stuckness in trauma. Whilst it is less visible, systemic racism is pervasive. The fact that we don't know how many black people there are in NI is a symptom of this institutional blindness. We are so invisible, undervalued, and unimportant that we are not even counted. The qualifications of many black nurses working in the NHS are not recognised for further post-graduate study. This is one example of institutional racism that we have to live with.

Racist crimes are now more common in Northern Ireland than sectarian attacks. The fact that a racial equality strategy, established in 2015, has not been implemented is a reminder of how insignificant we are in this society. We have been calling for ethnic monitoring, hate crime legislation and an update on the race relations order for years as part of the Racial Equality Strategy, but are yet to see concrete action.

Like many black people, I wrestled with the emotional and psychological toll of leading an organisation during the height of the Black Lives Matter movement. My emotions ranged from despair to anger. During that period, we were reminded that – while it may take different forms in different societies – systematic and institutional racism is something we have to live with.

When we took to the streets on 6 June 2020, to mourn our fellow black man's death and to highlight racial inequalities in Northern Ireland, we never expected to be faced by intimidation and harassment from our own police service. Although we have always known that the killer disease for our people is systemic racism, given the history of this country and the good nature of most people we thought that a show of solidarity across the whole of society was inevitable. That is how trusting we are.

Unlike other large public gatherings during the pandemic, our messaging focused on public health. We provided masks / face coverings and hand sanitizers, and social distancing was



enforced. But we were faced by armoured vehicles, surrounded by white men, all in police uniforms, all with guns. It is worth noting that the only peaceful socially distanced Black Lives Matter rallies that have been criminalized were the ones organised here in the north. Protestors were fined, cautioned, and referrals made for individuals to be prosecuted under the Serious Crimes Act, essentially arguing that anti-racism activists in NI are criminals. You will be forgiven for acting surprised when you witness a spike in racist hate crimes: graffiti, vandalism of private homes, far-right protests, and the burning of Black Lives Matter placards at some of the 12 July bonfires.

The Black Lives Matter rallies were the most unifying protests I've ever attended. Hugely diverse crowds enjoyed massive public support from passers-by and even drivers stuck in traffic seemed to be on board. The urgent response from the entire community has shown that not only was our pain real, but this was a moment when we could no longer be silent about it. The PSNI and the NI government can continue to dismiss or deny systemic racism in Northern Ireland, but black people and our allies have no doubt in our minds, NI has a serious problem with racism, and we have no elected representatives speaking for us.

The disproportionate and discriminatory policing of the Black Lives Matter rallies in June and the continuous denial of institutional racism in NI has been like a heart attack, but the lack of public condemnation of the hostility against black people is either coming from black people themselves or civil society, with no political willingness to call it out. We are in pain and too often our pain has been dismissed as if it isn't real.

There is a window of opportunity to act. We must be prepared to engage with uncomfortable conversations about race and to reflect on own conscious or unconscious biases that may be contributing to the normalisation of institutional racism. What happened on 6 June was not a one off. We need to be clear; the world is faced by three major pandemics. Racism, climate change, and Covid-19. We must vigorously dismantle institutionalised racism, tackle Covid-19, and halt climate change.

We have been patient and we now say enough is enough.

The case against the use of spit hoods in response to Covid-19

Patrick Corrigan, NI Programme Director and Head of Nations & Regions, Amnesty International UK

The last few years have seen a roll-out of spit hoods to police forces across the UK. Until this year, the exception had been the PSNI.

Despite lobbying by the Police Federation and requests by senior officers, the Northern Ireland Policing Board had withheld consent for their deployment due to questions over the human rights impact of the controversial restraint device.

For a long time, Amnesty International has raised concerns about spit hoods, also known as spit and bite guards, including the risk they may restrict breathing and cause extreme distress to the wearer. At the same time, the available peer-reviewed medical evidence points to a negligible risk of transmission of diseases such as HIV and Hepatitis from spitting and biting, raising serious questions about whether these devices are necessary for officer safety at all, a claim often made by senior police officers.

In March, we raised those concerns with the Chief Constable Simon Byrne, when he introduced the hoods, first to staff in custody suites and then to other frontline officers, in what he said was a health and safety response to Covid-19.

At the time, we strongly advised against the use of spit guards in the context of Coronavirus until specific guidance had been developed on the risks and effectiveness for police officers and members of the public.

There are potential risks in using these devices on individuals who are ill with Covid-19, or in recovery from it. It is known that Covid-19 can cause severe breathing difficulties, including damage to the lungs and airways. Any use of force that can restrict or impair breathing in these circumstances therefore presents additional risks of adverse outcomes. In addition, any struggle, panic, stress, or anxiety caused by the act of applying and using a spit hood is likely to cause extra stress on the respiratory system irrespective of the breathability of the hood itself.

By design, spit hoods are designed to block spit, vomit, blood, or other substances escaping them. So, when a wearer discharges a substance into the hood, the breathability of the fabric can dramatically drop, increasing the risk of significant breathing impairments and suffocation.

In addition, there are real concerns about officer safety. Amnesty's policing experts warn that the process of fitting the

hood, and the likely ensuing struggle, would result in a 'cloud of virus particles' as the struggle is likely to be a 'significant aerosol generating event'. Once placed over someone's head, the spit hoods themselves would do nothing to prevent the further spread of the virus via coughing, sneezing or exhalation. The use of spit hoods may therefore not only fail to offer the promised protection, but could in fact place police staff in greater peril.

We asked the police to provide any evidence that the hoods actually prevented or inhibited the spread of the Coronavirus.

In a 9 June response, the PSNI acknowledged to Amnesty that the manufacturers explicitly declare that spit hoods provide no protection against Covid-19 spread, stating: "The product will not prevent aerosols from coughing or sneezing and is therefore not an effective means to prevent Covid-19."

In light of this, we have asked the PSNI to suspend the use of the devices, and called on police forces across the UK to withdraw them from use in possible or suspected cases of Covid, pending detailed studies and evidence of their effectiveness and likely risks in using them. To date, this request has been refused. This is in stark contrast to other types of policing equipment that have to undergo rigorous medical and scientific testing before they can be authorised for use.

Meanwhile, John Wadham, the Policing Board's independent human rights advisor, has completed and submitted his report into PSNI responses to Covid, including the introduction of spit hoods.

While the content of that report is not yet public, his review of the human rights issues surrounding the devices, contained in the recently-published Policing Board Annual Human Rights Report, suggests the PSNI have not met the threshold for necessity and proportionality, given the serious concerns around physical and mental health impacts.

It is of concern that the pandemic may have been used as a reason to introduce these controversial restraint devices in Northern Ireland in absence of detailed evidence concerning their effectiveness or adequate understanding of the risks involved, including to officers themselves. The introduction of these restraint devices - the utilisation of which clearly amounts to a use of force - is a policy decision for the Policing Board, rather than an operational decision for the Chief Constable. We hope that the Board will soon decide to end their use until and unless key human rights tests can be met.



Save Our Sperrins – The campaign against NI's proposed goldmine

Cormac McAleer, Save Our Sperrins

Dalradian Gold Ltd is a Canadian exploration company that has applied for planning permission to build a goldmine and processing plant near the small rural village of Greencastle in Co. Tyrone, in the heart of the Sperrins Area of Outstanding Natural Beauty (AONB). Their proposed site is 1200 metres from a primary school and playgroup, and much closer than that to a church, a community centre, youth club, football club, and playing fields.

Dalradian's CEO, Patrick Anderson, was quoted by Bloomberg in July 2015 as saying, "I'm not talking about a single mine. We are working on building a mine camp here". So, while the company's current proposals are massive, we realise that the mining project could well expand way beyond the Sperrins.

The mining company has employed two marketing companies, MCE Communications and AV Brown, to promote the planning application. They have inserted full page ads in local papers and advertised on social media, on bus shelters in local towns and in Belfast, on radio and TV, in specialist magazines, and on big advertising hoardings regionally. They have lobbied political parties and business organisations, sponsored charitable organisations, and purchased Covid-19 protective equipment for care organisations and health centres. They have given gifts to community groups and set up a fund for individuals and community and voluntary groups, with recipients given a contract that states their grant award can be used by the company in promotional literature.

Dalradian had its initial planning application for an exploratory tunnel and site works approved for three years in January 2013, without the benefit of an Environmental Impact Assessment, though the company was asked to agree to 44 different terms and conditions. Approval was granted for the Curraghinalt Gold Project despite the site being situated in an environmentally sensitive area right beside a protected waterway, the Owenkillew River.

The acknowledged presence of acid water at the site was **not** found to be a matter of concern by the company, by the Northern Ireland Environmental Agency (NIEA), or by the planners. In fact, the statutory authorities relied on the expertise of the company on these matters. Subsequent to three year planning permission being granted with ministerial commitment that the 44 conditions would be robustly enforced, observers were shocked to find that the company was allowed to build an explosives store on a peat bog on the hilltop, and that conditions 25 and 26 on ensuring the protection of the fresh water pearl mussels (FWPM) were soon negated. In the intervening period, while the mining company carried out prospecting and exploration works, local people who had concerns about the workings of the Curraghinalt Project, or



about pollution incidents, have repeatedly felt that their complaints were not taken seriously by the authorities and that incidents were not robustly investigated.

In September 2017, a local woman challenged the decision of NIEA and the Department of Agriculture, Environment and Rural Affairs (DAERA) to allow higher parameters to the company for discharging a cocktail of heavy metals, flocculants, and other substances into the protected waterway. After High Court Proceedings going on for two years, the Judicial Review quashed the discharge consent in November 2019. Despite this, the company has appeared to continue largely as before in its day to day functions.

If you research goldmining anywhere in the world, you will learn that goldmining has a reputation for being an environmentally toxic industry, which poisons water, air, land, and health. If Dalradian's planning application is allowed to go ahead, it risks a huge increase in the numbers of cancers and respiratory diseases among people over a wide area.

Dalradian's planning application includes building a huge mountain (called a dry stack tailings or mine waste facility) that is 895m long, 365m wide, and 54m high - the equivalent of a 17 story building. This would store the huge amounts of mined rock which, as quoted from their planning application, will be ground to "a fine ore size, containing sulphide minerals, which in the presence of oxygen (air) will react with water (rain) to produce acid (sulphuric) that then releases a variety of metals in solution". These metals include: arsenic, mercury, lead, copper, chromium, cadmium, zinc, and more. They will find their way into our rivers and our air, and ultimately affect our health.

Take the impact on water first - these heavy metals will leak and leach into our water table and into our rivers. Our two local rivers are Owenkillew and Owenreagh; both are denoted as Special Areas of Conservation (SAC) due to the presence of freshwater pearl mussels, salmon, brown trout, and otters. Both rivers are headwaters of the Foyle River Basin, which is designated as an Area of Special Scientific Interest (ASSI) and is famous for salmon. Our two rivers join the Strule, the Derg, the Mourne, the Finn, and ultimately become the Foyle. Water is abstracted from the river downstream from Greencastle, at Newtownstewart, for the people of Castlederg. Heavy metals



cannot be diluted in water; they can only be diluted in acid. Hence, there will be a cumulative impact over time. Furthermore, NI Water does not currently test for heavy metals.

Our air quality will also be affected. The fine ore grains will be blown all over the countryside, by the strong winds, from the proposed elevated site overlooking Greencastle village. These fine particulates will enter the lungs of people, including children. A Finnish biochemist, Jari Natunen, found traces of fine ore dust (2.5 particulate matter) up to 60 km away from a goldmine in Kittilä, Finland. Academic research, including studies looking specifically at the health of gold miners, has suggested that long-term exposure to dust from gold mines may lead to an increased risk of various cancers and respiratory diseases.

Furthermore, the whole of the North West of Ireland is an area high in radon gas, according to Geological Survey Northern Ireland (GSNI). That is why people are required to put a radon barrier down in the foundations when they are building a house here. Dalradian has applied for a goldmine up to 1000 metres deep into the Earth. This would release radioactive contaminants, which will be blown about in the air into lungs and also into the water.

People involved in the campaign against the gold mine, Save Our Sperrins (SOS), have complained of abusive phone calls, hostile social media posts, attempts to misrepresent and undermine their message, threats, and even physical assaults. Three people involved have been warned of 'credible death threats' by police, who visited their homes in June 2019. A total of 37,179 people have written letters of objection against Dalradian's planning application to date (see NI planning portal ref. LA10/2017/1249/F).

Dalradian say they will provide hundreds of well-paid jobs. Generally, goldmines throughout the world employ few local people - instead they often fly miners in and out of the area and provide for all their requirements on site. Local people are concerned the mine could lead to a loss of jobs in farming, fishing, and tourism. They also worry about the long-term consequences for our area and our country if this goldmine is

given planning permission.

Our children and grandchildren will not want to live here if the air, water, and land is poisoned. Furthermore, the local council and government departments may be faced with a clean-up bill in perpetuity because acid mine drainage and sulphuric acid is self-generating, meaning that once it starts it cannot be stopped. Superfunds have been set up in several US states to try to deal with such a problem post mine closure. For example, in Nevada, the River Carson is still affected by acid mine drainage and sulphuric acid 150 years after the mine there closed.

The Minister for Infrastructure, Nichola Mallon, will make the final decision about whether or not to grant planning permission to Dalradian. She has announced that there will be a public enquiry, likely next year. However, some local people feel this creates an unfair and uneven playing field as they cannot afford to pay experts to represent them, whereas Dalradian will be able to wheel in dozens of consultants if they so choose.

Currently, the Save Our Sperrins campaign is asking for the right to have specialist representation at the public inquiry, given that the international corporate mining sector (Orion Mine Finance) is financing experts for the pro-Dalradian case. Regardless of what recommendation the public inquiry makes, the final decision will still ultimately rest with the Minister for Infrastructure.

For local people, this campaign is about basic rights: the right to have clean water, fresh air, unpolluted land, and good health. It's about the right of our children's children to live without the fear of long-term pollution.

It is a long haul campaign, and one which demands that our rivers and living creatures be protected and free from exposure to toxic pollution.

To find out more about the Save Our Sperrins campaign, visit www.facebook.com/SaveOurSperrins.

A rights based return to power sharing – some progress to report

Daniel Holder, Deputy Director, Committee on the Administration of Justice

In April 2019, during the negotiations to re-establish the NI institutions, the CAJ-UNISON co-convened Equality Coalition issued a Manifesto for a Rights Based Return to Power Sharing. This provided a checklist of rights-based issues we considered in need of resolution if power sharing was to be resumed on a more sustainable basis.

The manifesto noted that, “Many binding key rights based commitments of the agreements that make up the peace settlement remain unimplemented or misimplemented ... Such commitments themselves were safeguards on the NI Executive to counter and prevent abuses of power, discriminatory decision making and rights deficits ... There is little point in re-establishing institutions only for them to fail to deliver and collapse again for the same reasons.”

Among the issues listed for action were the “Proper application of the ‘Petition of Concern’ as originally intended in the GFA as a minority rights protection consisting of equality and human rights scrutiny”, and “Full implementation by public authorities of the ‘Section 75’ equality duty including rigorous enforcement of failures to comply by the Equality Commission”. The manifesto also demanded the removal of “those political vetoes within the NI Executive that are not based on - and have conflicted with - equality and rights duties”.

The New Decade New Approach (NDNA) bilateral agreement of January 2020 made commitments to deal with a number of these issues. Whilst some of the commitments have been stalled by the pandemic, there has been some progress. Recently the Department for Communities (DfC) set out a timetabled process to deliver the Anti-Poverty Strategy and a range of equality strategies that had previously been blocked. Expert panels have been set up to inform these strategies, which draw on the expertise in academia and civil society.

Another welcome development has been the changes to the Ministerial Code and Guidance produced by the Department of Finance (DoF) in March. Paragraph 9.6 of the new Ministerial Guidance on the Ministerial Code of Conduct, strengthens the Section 75 Equality Duty making Heads of Government Departments and Chief Executives responsible in their role of accounting officers “for compliance with Section 75”, among other matters. This change mitigates against a scenario whereby a Minister hostile to equality can stifle application of the equality duty.

The item that has received most attention, however, is a change



progressed through Assembly legislation - namely the Executive Committee (Functions) Act (Northern Ireland) 2020. This legislation limits the application of an Executive-level veto that was introduced further to the St Andrews Agreement. This veto could be exercised over matters that were merely “significant and controversial”, which were either not in the Programme for Government, or were considered ‘cross-cutting’ due to affecting more than one Stormont Department. This veto had presented particular problems, not least as many rights and equality issues are significant and controversial to the DUP, or could be considered cross cutting. Therefore, whilst limitations on Executive power under the GFA were at least envisaged to be based on equality and human rights, this was contradicted by a political veto that could be used to block equality and human rights initiatives.

Whilst the most prominent invocation of this provision was over a planning decision, the origins of the veto was in a DUP ask at St Andrews for a mechanism to block the ability of individual ministers in the Executive to take decisions on their own. One equality promoting Ministerial decision that had prompted this original ask was the abolition of the 11+ by then Education Minister Martin McGuinness in his last day in office, before the then suspension of Stormont.

The Executive Committee (Functions) Act (Northern Ireland) 2020 limits, but does not abolish, the veto. It introduces a qualification so that a Minister does not need to refer cross-cutting matters to the NI Executive for decision unless it “affects the exercise of the statutory responsibilities of one or more other Ministers more than incidentally”. It retains the ability for the veto to be used on “significant and controversial matters” outside the Programme for Government. The act, which progressed through the Northern Ireland Assembly through accelerated passage, did result in a very public DUP rebellion. For once, however, the reform was not reneged upon and the bill was passed into law. Whilst it does not resolve the broader question of vetoes that are not based on equality and rights, it is some progress at least.

What are the implications of the Internal Market Bill for human rights?

Les Allamby, Chief Commissioner, Northern Ireland Human Rights Commission (NIHRC)

In mid-July 2020, the government published its White Paper on the UK internal market. The introduction set out the following: “The United Kingdom has long been a trusted trading partner in the global economy. Our unyielding commitment to the rule of law and the highest standards – enshrined in law across the board, our dedication to the protection of employees and the environment, our openness to competition and the control of subsidies or the energy and innovation of our business sector, means we are a robust open and trusted partner, right across the economy.”

Less than eight weeks later, the government announced that the Internal Market Bill’s measures will “break international law in a very specific and limited way”. The bill has ramifications on two fronts. In 2019, I was at a meeting in Geneva with UK officials to discuss the government’s role on the international stage post Brexit, the argument was lucidly made that the UK would have more autonomy and deftness to intervene as an honest broker freed from needing to agree positions in advance with 27 other member states. The only difficulty with this position was that everyone else we met was pointing out that the vacuum left by the United States increasing antipathy to international institutions, including human rights ones, was largely being filled by China and the European Union, and not the UK. An exhibition outside the Human Rights Council Assembly Hall (no doubt handsomely paid for) attempting to extol the virtues of Uighur camps in China as educational development centres was a depressing example of soft power in action.

Playing fast and loose with international treaties once signed hardly endorses the UK government’s credentials as a broker on the international stage able to invoke the importance and value of upholding the rule of law and international human rights norms and standards.

Second, there is the practical consequences for the Ireland/Northern Ireland protocol and its commitment to upholding the UK government’s promise of “no diminution of rights under the rights, safeguards and equality of opportunity section of the Belfast (Good Friday) Agreement”. Putting aside for a second where such a laissez faire approach to international agreements begins and ends, the Internal Market Bill and its amendments seek to make clear that challenges to parts of the bill cannot be lawfully made under



the Human Rights Act. Only a month earlier the government had issued an explainer document outlining how the key human rights and equality provisions in the Belfast (Good Friday) Agreement are supported by the European Convention on Human Rights, including access to courts and remedies for breaches of convention rights. NIHRC and the Equality Commission for Northern Ireland (ECNI) published a joint briefing raising concerns that amendments to the bill undermine key provisions of the Good Friday Agreement.

Moreover, beyond the lack of adherence to an international agreement and domestic human rights standards, will the other parts of the Bill have an adverse impact on the work of the two commissions in their role as a dedicated mechanism to ensure no diminution of rights? I am not absolutely convinced it will have no effect, and the two commissions have sought reassurance and clarity that provisions around indirect discrimination in the bill do not seep into the protections of equality and human rights within the protocol.

All of this sits alongside the long-standing commitment of the government not to reform the Human Rights Act while the UK remains a part of the European Union, including during the transition period, a time frame soon coming to an end. Meanwhile, the Ministry of Justice in Britain has recently published a call for evidence on whether judicial review strikes the right balance between enabling citizens to challenge the lawfulness of government action and allowing the executive and local authorities to carry on the business of government.

In tandem with all the uncertainties for business and trade as the UK exits the European Union, we need to add the long term protection of human rights and legal remedies, which suggests that the need to remain vigilant around securing the protections contained in the Good Friday Agreement is as important as ever.

The Victims' Payments Regulations 2020 and the politics of definitions

Dr Cheryl Lawther, Senior Lecturer, School of Law, Queen's University Belfast

The Victims' Payments Regulations 2020 came on to the statute book in January 2020. Known as the 'Troubles Permanent Disablement Payment Scheme', the regulations provide for the payment of a pension to victims and survivors who were injured and disabled as a result of a conflict related incident. According to the legislation, the purposes of the scheme are to "(a) acknowledge the harm suffered by those injured in the Troubles, and (b) promote reconciliation between people in connection with Northern Ireland's troubled past".

At first glance, the Scheme appears to settle the longstanding campaign for a pension for those seriously injured as a result of the conflict and responds to the historical inadequacy of the Criminal Injuries Compensation Scheme. It is also a practical response to the simple fact that with the passage of time, many of those injured have found the long term impact of their disability increase and financial security simultaneously decrease. However, the issue of who is eligible for a pension under the Payments Regulations has become a site of controversy. Under the Victims and Survivors (Northern Ireland) Order 2006, the legal definition of a victim in Northern Ireland is anyone "who is or has been physically or psychologically injured as a result of or in consequence of a conflict-related incident", a care giver to the above, or someone 'who has been bereaved as a result of or in consequence of a conflict-related event'. As an inclusive definition of victimhood, the order includes all those affected by the conflict – civilians, members of the security forces, former members of paramilitary organisations, and their families. The order does not distinguish between how someone came to be injured or bereaved and takes the individual experience of suffering as its starting point.

Perhaps in an effort to avoid the controversial scenes and charge of creating 'moral equivalence' between civilian victims and members of paramilitary organisations, which accompanied the Consultative Group on the Past's (CGP) 2009 recommendation of a 'Recognition Payment' of £12,000, payable to all victims of the conflict, the Troubles Permanent Disablement Payment Scheme has adopted a narrower definition of victimhood. Under Regulation 6 it explicitly excludes any individual who "(a) has a conviction (whether spent or not), and (b) that conviction was in respect of conduct which caused, wholly or in part, that incident". Those who injured another person and received a conviction of 30 months or more can apply to the Board which will administer the scheme to have their application for a pension assessed. The



Board will have the discretion not to make a payment where a 'relevant' conviction would make payment inappropriate. The guidance makes clear that the category of 'inappropriate' will apply to anyone responsible for causing serious harm, such as murder, attempted murder or grievous bodily harm.

This move has pleased those who have campaigned on behalf of 'innocent' victims and who have advocated for a strict division between 'innocent' victims and 'guilty' perpetrators. The First Minister and leader of the Democratic Unionist Party (DUP), Arlene Foster, is, for example, on the record as stating, "It is right and proper that victim makers are not able to avail of this pension. It would be wholly wrong for bombers to be awarded a pension". Of course, many victims of violence and human rights abuses are innocent victims, both in respect to their non-combatant status and where individuals and communities had violence visited upon them without any morally or politically justifiable reason. However, cleaving to such a reductionist account of conflict is to mask the messy reality of violence and human rights abuses, and the complex range of harms that may result. In the Northern Ireland case, this means failing to acknowledge the experience of those individuals who do have convictions but who have, for example, also sustained physical and/or psychological injuries during imprisonment, as a result of torture or who were targeted by rival paramilitary factions or state forces.

From a rights-based perspective, the 'Troubles Permanent Disablement Payment Scheme' therefore excludes certain variants of victimhood and the needs and rights of those individuals. Appearing to designate some victims as more 'worthy' or 'deserving' of support than others, the scheme easily reignites questions around the existence of a hierarchy of victims. Such a position is neither human rights compliant or in keeping with the legal definition of a victim. Furthermore, it is contrary to the scheme's objective of promoting acknowledgement and reconciliation. Looking more broadly, the Payment Scheme may also have opened the door for such exclusionary calibrations of victimhood to stray into, and take further root, in the wider legacy debate in the coming months.

Insult to injury? Legacy cases left unresolved

Gemma McKeown, Solicitor, Committee on the Administration of Justice (CAJ)

It has been almost 20 years since the European Court of Human Rights (ECtHR) found the UK in breach of the right to life under Article 2 of the European Convention on Human Rights (ECHR). It ordered proper investigations into a number of NI legacy cases, including the killing of Pat Finucane, as well as the killing of Patrick Shanaghan, a case in which CAJ represents the next of kin. In the case of Pat Finucane, despite a successful Supreme Court case in February 2019, the family still await a decision from the UK on how it will conduct a proper human rights compliant investigation into his death. The next of kin of Patrick Shanaghan also face delay as they continue to await delivery of the Police Ombudsman's report into his death. This report has been held up following challenges to the powers of the Police Ombudsman taken by retired RUC officers, arising from the report into the Loughinisland Massacre.

The Stormont House Agreement (SHA) contained mechanisms that would have dealt with many legacy cases. However, in March 2020, the UK government did an apparent U-turn on its support for this agreement by setting out a vague counter proposal for a 'fast-track' scheme in a Written Ministerial Statement (WMS) from the NI Secretary of State.

In September, the Committee of Ministers once again examined the UK's compliance with its obligations to investigate these cases, as it has been doing since they were before the European Court of Human Rights. The committee expressed concern about the lack of detail in the WMS and questioned how these proposals would comply with the right to life under Article 2 ECHR. They also noted that the proposals appeared to risk further delay - delay which has been a common theme throughout UK response to these cases for almost two decades.

In examination of the Finucane case, the Committee of Ministers has previously requested information on how the UK intended to comply with the Supreme Court ruling on the Pat Finucane case. Last month, they expressed their "deep concern" that a decision has still not been made on how to react to the Supreme Court judgment, and underlined the urgent need for the authorities take



such a decision without further delay. Given the prevarication and delay from government that Geraldine Finucane has faced since her successful Supreme Court case, she has been forced to litigate once again on this matter; resulting in proceedings before the High Court on 9 and 12 October. In that case, Judge McAlinden also expressed his concern about the delay incurred; asking crown counsel if this is not a case of "adding insult to injury", noting that there has not only been a breach of the Article 2 procedural obligation to investigate this death but also a substantive breach of the right to life itself.

The court made it clear that the observations and timeline of the Committee of Ministers were of particular relevance to these proceedings. Notably, on the second day of hearing, counsel for the Secretary of State apologised on his behalf for the delay in reaching a decision about the case and agreed to provide a decision in this case by 30 November in advance of December meeting of the Committee of Ministers.

While the spotlight of the Committee of Ministers continues to expose the ongoing breaches in these legacy cases, CAJ has called for enforcement proceedings to be issued against the UK for its repeated delay and failure to implement these historic judgments in good faith. We will be closely monitoring any further updates from the UK and the decision of the Committee in December.

Justice delayed is justice denied and nowhere is that more clearly demonstrated than in these cases.

The UK asylum system is broken, but inhumane measures won't fix the real issues

Reanna Smith, Political Correspondent,
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Giant wave machines, ocean blockades, and floating detention centres are just some of the Home Office's latest ideas to deter desperate asylum seekers from entering Britain. The 'blue sky' proposals being considered were [recently revealed in leaked documents](#). They included the consideration of an asylum processing centre on Ascension Island, a volcanic island 5000 miles away from the UK, as well as processing centres on disused ferries. Shortly after the revelation that the government had been considering these proposals, the Home Secretary, Priti Patel, announced an overhaul of the [UK asylum system](#).

[Her announcement](#) comes not long after the Home Secretary was criticized for labelling lawyers as "activists" in a tweet about deportations of asylum seekers that were prevented by legal appeals. The [President of the Law Society](#) of Northern Ireland, Rowan White, *condemned her comments*. He said: "No lawyer should be attacked for being an activist in pursuing their clients' interests. That is their duty".

With the number of people crossing the Channel increasing, politicians and the media have focused their attention on asylum seekers, resulting in these new proposals. However, whilst [there were 35,566 asylum claims last year, only an estimated 1,892 of those claims were from people arriving on small boats](#). It's also important to recognise that even though the minority of asylum seekers enter the UK this way, it is still legal.

Despite this, the Home Office has used increasing numbers of crossings to justify their latest inhumane measures whilst ignoring statistics showing a decrease in the number of asylum applications. [Head of Advocacy at the Refugee Council](#), Andy Hewitt, explained that the media hasn't told the whole truth, he said: "The latest immigration statistics clearly reveal that, contrary to much of the mainstream media coverage this summer, the UK is not being inundated with asylum claims. In fact, asylum applications were down by 40% from April to June 2020 and existing safe and regular routes to protection were heavily impacted."

Priti Patel has claimed that the UK asylum system is "fundamentally broken", and she is right. The system is broken because desperate humans are forced to risk their lives crossing the English Channel due to a lack of safe routes. It's broken because over [60% of asylum seekers have to wait more than 6 months for a decision about their claim](#). It's broken because [child refugees in the UK cannot be reunited with their parents](#), and it's broken because [asylum seekers can be detained indefinitely](#) in detention centres with a history of abuse, resulting in increased suicide attempts. The current system is failing people who have been



victims of torture and human rights abuses, and the way to fix this is not to deter them from entering the UK by [returning to hostile environment policies](#).

These issues in the asylum system are not just present in England but across the UK. Detention centres like Larne House in Northern Ireland may not have been at the centre of abuse accusations but they have been previously criticised for having an "oppressive atmosphere", and many of the detainees held in Larne House are eventually sent to more problematic centres, such as Yarls Wood. Recent reports have also provided evidence for the harsh realities faced by asylum seekers in Northern Ireland, with [a report from last year](#) finding that 77% of asylum seekers said their mental health had declined since entering the asylum process, and 79% claimed that they were left unable to afford enough food.

Under the [1951 Refugee Convention](#), the UK has a responsibility to protect the asylum seekers in this country. [A 2011 report](#) from the United Nations High Commissioner for Refugees (UNHCR) criticized the country's detention of asylum seekers and suggested that this be used only as a last resort, not for administrative convenience. Nine years later, however, the government continues to go against these suggestions and is considering doing just that.

If the government really does want to fix the "fundamentally broken" system, the first step they must take is to create safer pathways for asylum seekers to enter the UK. They then need to focus their attention on the long waiting times faced by asylum seekers and live up to their responsibility to protect these people, ensuring they don't face abuse or destitution in a country that should make them feel safe.

Reanna Smith writes for the Immigration Advice Service, an organization that provides legal assistance for asylum seekers and refugees in the UK.

The quest for clarity on the commissioning of abortion services in Northern Ireland

Eliza Browning, Human Rights Project Coordinator, Committee on the Administration of Justice (CAJ)

The Department of Health has engaged in persistent delays over releasing readily available information on the commissioning of abortion services (or lack thereof).

The Abortion (Northern Ireland) Regulations 2020 were tabled by the Secretary of State on 25 March 2020 and entered into force on the 31 March 2020. Despite the legal requirement to provide abortion services, there has been no commissioning of services from the Department of Health (DoH). Individual health trusts have been left with the responsibility of providing limited abortion service provision with no additional funding, support, or guidance from the department. The rise of the pandemic means that women are unable to travel to England for abortions. This, combined with the lack of available services in NI means that many women are, at best, receiving medical help within a complicated and ad hoc process, which varies between Trusts. At worst, they are being denied a medical service that they are legally entitled to receive.

On 12 May 2020, CAJ put Freedom of Information (FOI) requests into both the Department of Health and the Health and Social Care Board, seeking policy documents related to the commissioning of abortion services. The request was limited to ministerial and other briefings, policy or commissioning documents, and substantive correspondence with other public authorities.

On 17 June, the department responded to say that they held no documents about the commissioning of services, and that the matter of early medical abortion service was referred to the Executive. We clarified that documentation about this matter was encompassed within our original request. On 23 June, the department confirmed that they held no documents around the commissioning of abortion services and stated they would continue to look for documents around the decision to refer the matter of early medical abortions to the Executive.

We subsequently received a response from the HSBC that contained multiple documents, including one entitled, Commissioning of Abortion Services, Project Initiation Document, which clearly fell within the remit of the original



request to the department. On 15 July, we put in a request for an internal review into the department, on the basis that it is highly unlikely they hold no documents on the commissioning of services given the documents released by HSBC, and considering that some documentation must have been generated to inform the stated position of the Minister of Health that he does not have to commission such services.

On 16 July, the department sought clarification over the request, and we reiterated that the terms of the request were clear. We asked for a final response by 30 July. That was our last communication with the department.

Concurrently, we were contacted by the department's Internal Review Team and invited to withdraw our request as the department was "still engaged in conversation with [us] seeking to clarify" the terms of our request. We were told that a point of confusion was potentially around the definition of what constituted a 'policy'. We responded that if there was any confusion about the definition of a policy, it rested with the department, as we follow the definition of a policy in the department's own equality scheme. On 19 August 2020, we informed the department that we were not going to be withdrawing our request for an internal review, and additionally requested that the department now investigate the delay in providing us with documentation around the decision to refer the matter of early medical abortion to the Executive.

On 11 September, we were told that an internal review would not be progressed due to the matter having been 'redefined' and because "work on the response is underway". As of the date of writing this article, we have not received any further communication from the department on this matter. We have submitted a complaint on the matter to the Information Commissioner's Office (ICO).

A stitch in time

In 1995, CAJ led the creation of the 'Quilt for Beijing', pictured on the right. The quilt was created by women from the north and south of Ireland in preparation for the 4th United Nations World Conference on Women, held in Beijing during 1995. Women have worked with textiles and fabric for centuries and quilt making is a universal method of storytelling and documenting history.

The quilt has since travelled throughout Ireland as a tool for discussion among women's groups on matters such as housing, education, domestic violence, peace, and human rights. This year marks the 25th anniversary of the Beijing conference and the quilt remains a powerful, timeless representation of the experiences of women in Northern and Ireland.

Contributors to the quilt included CAJ, UNISON, individual women, as well as women's organisations based on both sides of the border. You can view a detailed explanation of each panel [here](#).



Everyone Equal – new collaborative campaign launches on human rights

CAJ is part of a new collaborative campaign with three other human rights organisations to bring the message of fairness and equality to all people living in Northern Ireland. Along with the Human Rights Consortium, PPR, and the PILS Project, we've launched the Everyone Equal campaign to raise the awareness and public understanding of human rights and their value to our society. As a first step, we have worked with our campaign partners to produce a series of animated videos that explain some of the key rights issues currently facing Northern Ireland. All of these are available from the Everyone Equal website: www.everyoneequal.org.

Equality proofing the return to school

The Covid-19 pandemic has had far reaching impacts on all aspects of NI society, not least education, with most pupils being withdrawn from school for five months due to the strict lockdown period and the subsequent summer break. The Equality Coalition's Education Sub-Group has put together a briefing paper to highlight to decision makers how to 'equality proof' the return to school. Download it [here](#). The sub-group has presented this paper to the Education Committee at Stormont and is already planning further engagement with Committee members.

Upcoming event: A conversation with Lord Kerr

To mark CAJ's Annual Meeting, we are holding an online event on 'Human Rights and the Rule of Law', featuring Lord Brian Kerr, former Justice of the Supreme Court in conversation with Professor Brice Dickson from 11am to 12.30pm on Friday 11 of December 2020 (by Zoom).

Brian Kerr, Baron Kerr of Tonaghmore, is a former Lord Chief Justice of Northern Ireland (2004 to 2009) and retired as a Justice of the UK Supreme Court on 30 September 2020. Since his retirement from his long and distinguished judicial career, Lord Kerr has spoken out in defence of the rule of law and the role of the judiciary in holding the government to account. He has also said that he regards his most important case as the 2018 successful legal challenge to Northern Ireland abortion law brought by the NI Human Rights Commission.

In this online event, Professor *Emeritus* Brice Dickson (QUB), a distinguished legal academic and former Chief Commissioner of the NI Human Rights Commission, will discuss issues relating to human rights and the rule of law with Lord Kerr. There will be a short opportunity for participants to put questions directly to Lord Kerr and Professor Dickson. The event will be chaired by the Chair of CAJ's Executive, Dr Anna Bryson. To register, go to <https://bit.ly/2JpRniy>.