



Lockdowns and human rights

Brian Gormally, Director, CAJ

As we labour through another lockdown, with legally imposed restrictions on movement and many aspects of daily life, people may be wrestling with the human rights implications of all this. On the one hand, most people recognise the need for restrictions to combat a deadly pandemic, but on the other hand they are wary of the way governments may misuse the extensive powers they have been given. The wariness is justified given the way some authoritarian regimes have used the excuse of Covid, and the emergency laws they have passed, to restrict and criminalise protest against them. The pandemic has also been characterised by the excessive use of policing powers against ethnic and religious minorities. In an example close to home, the policing of the Black Lives Matter protests here in June was found by the Police Ombudsman to be unfair and discriminatory.

A disruptive minority also intervenes in this difficult dilemma. These are the extreme libertarians, strongest in the United States, but also present in Britain and Ireland, for whom liberty is purely individualistic and freedom means the right to carry military-style guns, to incite racist violence and to oppress and discriminate against anyone with impunity. These people have no

interest in human rights, and many are linked to white supremacist and conspiracist groups who spread hatred and misinformation both on social media and in the right wing press and broadcast media.

So how are we to use a human rights approach to navigate through these difficult times?

We first need to understand that the Coronavirus pandemic has caused suffering and death on a massive scale. On these islands, the number of people killed by the virus now exceeds the number of civilian deaths that occurred here during the Second World War. In the current wave of infections, hospitals have been under huge pressure and other forms of health care have suffered as a result. In spite of constant disinformation from ideologically motivated Covid-deniers and lockdown sceptics on social media and right wing media, there can be little serious doubt that we are experiencing a genuine health emergency.

That is an important starting point when we come to consider the human rights implications of legislation designed to combat the pandemic. For very few human rights are absolute, without any limitations. In fact, in the European Convention on Human Rights (ECHR), only Article 3 (Prohibition of Torture) contains no qualifications or limitations. The

Inside this issue of Just News....

Lockdowns and human
rights

Pages 1 & 2

A tribute to Lord Kerr

Page 3

The use of Stormont's vetoes
in the context of a pandemic

Pages 4 & 5

A Bill of Rights – Now more
than ever.

Pages 6 & 7

Legal action on lack of
abortion services in
Northern Ireland

Page 8

Initial breaches of the UK 'no
diminution' commitment

Pages 9 to 11

Final report on Ireland's
Mother and Baby Homes

Page 12

Is Israel an Apartheid State?

Page 13

Deliberating Constitutional
Futures

Page 14

The impact of Covid-19 on
children and young people
with vision impairment in
education

Page 15

Civil Liberties Diary

Page 16

formulation of qualifications varies from Article to Article, but the common thread is that rights may only be interfered with by a public authority if the limitation is prescribed by law, pursues a legitimate aim, and is necessary “in a democratic society”. Obviously, specific legislation, properly passed with sufficient parliamentary scrutiny, should satisfy the “prescribed by law” test, though we have had criticisms of the way Coronavirus Regulations in Northern Ireland are passed without proper advance scrutiny by the Assembly. Legislation must also be drafted well enough to give legal certainty to those enforcing laws and those who must obey them. The “protection of public health” is listed as a legitimate aim in a number of Articles, but that still leaves the issue of whether restrictions are necessary.

Part of the assessment of necessity is that any restriction of a right must be proportionate. This principle requires there to be a link between the purpose for the restriction and the measures employed to achieve that purpose. The questions that need to be answered in making an assessment include:

- Is the purpose sufficiently important to justify the restriction? i.e. are there relevant and sufficient reasons to justify the restriction?
- Will the measures proposed achieve that purpose?
- Are the measures to be taken the least restrictive to achieve the intended purpose?
- Are the restrictions to ECHR rights necessary to meet the legitimate aims set out in the ECHR rights concerned?

In this case, the seriousness of the threat to public health must be considered, clearly based on expert medical advice. Then the effectiveness of the proposed measures needs to be assessed – again, in this case, based on the best scientific advice available. Then we must employ a presumption against restrictions on human rights to assess whether any less intrusive or restrictive measures would achieve the needed protection of public health. Lastly, taking all these matters into account, we must decide whether these restrictions are really necessary.

The above describes the basic ‘human rights test’, but it is not simply an academic or textual exercise – the process must be continually refreshed and updated as circumstances change. It must also extend into the practical implementation and enforcement of the relevant legislation. The factors to be aware of include mission creep (whether the powers are being used for other purposes), unjustified temporal extension of the powers (and whether there is an automatic “sunset clause”), any unforeseen or collateral consequences, and disproportionate or discriminatory enforcement.

As regards enforcement, in Northern Ireland we have hard-won systems of police oversight that take a human rights approach. In respect of policing the coronavirus regulations, CAJ and Amnesty criticised the PSNI approach to the BLM protests, and so did the Policing Board and (as already referenced overleaf) the Police Ombudsman. All argued for an enhanced application of the human rights approach by the police themselves.

The Department of Justice has also just published Guidance on the exercise of police powers under the relevant legislation. It says that officers should be “particularly cognisant of the following: a) The rights to respect for private and family life and the home under Article 8 ECHR; b) The rights to freedom of peaceful assembly and freedom of association with others under Article 11 ECHR; c) The prohibition on discrimination under Article 14 ECHR; d) The right to peaceful enjoyment of possessions under Article 1 Protocol 1 ECHR; e) The best interests of the child as a primary consideration under Article 3 UN Convention on the Right of the Child.”

The Guidance says that the powers should only be used by officers “where they consider it necessary and proportionate to do so”. In the course of that decision making, the Guidance says that they “should take into account when assessing proportionality, the full extent of the circumstances before them and the range of options available to them. The action taken should be commensurate to the public health risk in the circumstances.” It also warns against using the powers for anything other than the specific aims of the legislation. This Guidance shows how a human rights approach can lead to effective, lawful, and transparent decision making by police and others. It also gives a template for holding police to account if they deviate from the human rights approach laid out.

The existence of human rights standards and laws does not prevent dilemmas arising that require difficult decisions. However, a consistent human rights approach, informed by factual analysis and expert evidence, can help us make sense of problems and point towards solutions. It also helps us to deal with the ‘noise’ of politically motivated argument and the misinformation disseminated by various vested interests. A human rights approach is an indispensable navigation aid for the troubled times we are in.

As UN general secretary Antonio Guterres said in a recent [article](#) published in the Guardian: “We are all in this together. The virus threatens everyone. Human rights uplift everyone. By respecting human rights in this time of crisis, we will build more effective and equitable solutions for the emergency of today and the recovery for tomorrow.”

A tribute to Lord Kerr

Brice Dickson, Professor of International and Comparative Law, Queen's University Belfast

The unexpected death of Lord Kerr of Tonaghmore on 1 December 2020 is a huge loss not just to his family and friends but also to the legal systems of these islands. Having served as Senior Crown Counsel from 1988 to 1993, Brian Kerr was appointed a judge of the High Court of Northern Ireland at the age of 44 and then Lord Chief Justice in 2004. On the retirement of Lord Carswell as a Lord of Appeal in the House of Lords, Sir Brian was selected as his replacement in 2009. He was the last Lord of Appeal ever appointed because later that year the Supreme Court took over as the UK's top court and Lord Kerr became one of the 12 Supreme Court Justices. He remained there for exactly 11 years, longer than any other Justice to date. He retired just two months before his death.

When he was the chief judicial review judge in Northern Ireland, Brian Kerr often dealt with very sensitive issues. Perhaps most famously, he upheld a challenge to the Lord Chancellor's decision not to change the oath that had to be sworn by persons appointed as Queen's Counsel in Northern Ireland, even though this meant accepting that his boss at the time, Lord Chief Justice Carswell, had misled the Lord Chancellor into thinking that senior judges had been consulted about a Committee's recommendation on the matter and had been against it, which was untrue.

He welcomed the Human Rights Act 1998, which became binding on Northern Ireland's Assembly and Executive in December 1999, and subsequently on all other public authorities in October 2000. His view that the police's handling of the Loyalist 'protest' at Holy Cross School in 2001 had not breached the European Convention on Human Rights (ECHR) was endorsed by the Court of Appeal, the House of Lords, and the European Court of Human Rights. In another case he favoured a broad application of the right to life when considering whether witnesses at a public inquiry should be granted anonymity, but the House of Lords (including Lord Carswell) overturned him.



In the Supreme Court, Lord Kerr continued to apply articles of the ECHR as generously as possible, urging his fellow judges to go beyond the position of the European Court of Human Rights if necessary. This applied not just to the right to life, but also to the right not to be ill-treated, the right to a fair trial, the right to a private life, and the right to education. He was a frequent dissenter, even more liberal and feminist than Lady Hale. He supported the minority view that nothing said to police officers by an arrested person prior to having assistance from a solicitor should be admissible as evidence. He argued that once the government has ratified a human rights treaty, the rights in question should be taken as incorporated into domestic law without the need for any additional domestic legislation.

Perhaps Lord Kerr's finest hour was his 2018 judgment in the Northern Ireland Human Rights Commission's case on abortion law. He cleverly interpreted the Northern Ireland Act as giving the Commission standing to bring the case and he then led most of his colleagues in holding that the current law violated women's right to a private life. He and Lord Wilson also thought it violated women's right to be free from inhuman or degrading treatment.

Had he not died so prematurely, aged 72, it is certain that Lord Kerr would have been a voice of reason and fairness for years to come. All human rights activists should deeply mourn his passing.

A message of sympathy from CAJ: Before his untimely death, Lord Kerr had been due to speak at CAJ's AGM in December 2020 to discuss 'Human Rights and the Rule of Law'. We were deeply saddened to hear of his death; he was a true upholder of the rule of law. We would like to once again send our heartfelt condolences to his family.

The use of Stormont's vetoes in the context of a pandemic

Robyn Scott, Communications and Equality Coalition Coordinator, CAJ

In November 2021, during the deadly second wave of the pandemic, the DUP twice used a cross-community veto to block the extension of public health measures proposed to contain the spread of Covid-19. These measures were supported by all other parties. Nonetheless, the DUP's unilateral use of the so-called 'St Andrews Veto' was enough to ensure the original proposals could not progress.

What is the St Andrews veto?

The 'veto' in question is not the 'Petition of Concern' cross-community safeguard introduced within the Good Friday Agreement (GFA), which has also attracted controversy at times because it has been used to block legislation within the Assembly well outside its intended purpose as a rights safeguard. Rather, the veto exercised by the DUP in this instance is drawn from the 2006 St Andrews Agreement, and relates to decisions made within the NI Executive (i.e. the cabinet of Stormont Ministers). St Andrews led to two significant changes, which were as follows:

1. It changed how Executive decisions were taken by introducing a process where three ministers (without any criteria) can require a NI Executive decision to be carried on a 'cross community basis', rather than by a simple majority;
2. It significantly extended which decisions need to be taken by the NI Executive as a whole, rather than individual ministers. The new veto could therefore be applied to any decisions that are 'significant' or 'controversial', and not in the Programme for Government.

In practice, therefore, any NI Executive decision can be vetoed solely by any unionist or nationalist party that has three Ministers, with the votes of 'others' negated. The veto has been invoked to block provisions to further rights for LGBT people, women, children, and minority language speakers. Indeed, the manner in which this veto (and the Petition of Concern) has been used can be argued to have contributed to the destabilisation and collapse of the NI Executive in 2017. Its latest use by the DUP to block restrictions during a time of a public health emergency can therefore be viewed as part of a wider pattern of political dysfunction.

The exercise of the veto over public health measures

Specifically, the veto was wielded by the DUP to block the extension of NI's four week 'circuit breaker'; a package of restrictions first agreed by the NI Executive on 16 October 2020. This involved an additional week of school closures (prior to the existing half term week); the closure of close contact services, cafés, pubs, and restaurants; and additional restrictions on gatherings and visiting other people's homes.

While the DUP did not veto the initial circuit breaker, the DUP Agriculture Minister, Edwin Poots MLA, publicly expressed 'grave reservations' in relation to it. In media interviews on the matter, the Minister claimed that the prevalence of Covid-19 was six times higher in nationalist areas than in unionist ones – a claim which had no evidential basis according to the Health Minister, Robin Swann MLA.

When Mr Swann tabled a proposal on 10 November 2020 to extend the circuit breaker restrictions by another two weeks, this was blocked by the DUP using the St Andrews Veto. A subsequent proposal from the Health Minister suggesting a one-week extension instead was also blocked by the DUP. This was despite the extension being supported by all other parties (UUP, SF, SDLP, Alliance), as well as both NI's Chief Medical Officer and Chief Scientific Officer, who had reportedly advised that without this action being taken there would be 'excess deaths'. The DUP First Minister, Arlene Foster MLA, argued in the media that a balance needed to be struck to protect both hospitals and livelihoods, arguing that the economy needed to be considered as well as health advice.

Ultimately, on Thursday 12 November 2020, a DUP proposal to allow close contact and (no alcohol) cafés to reopen on Friday 20 November 2020, coupled with a date of 27 November to reopen pubs, restaurants, and hotels, was passed by a majority of the NI Executive. This was, however, not supported by the nationalist parties (SF, SDLP). Although there is no way to know the exact impact of the DUP's use of the veto at the height of the worst public health crisis for several generations, the party's decision to do so attracted significant press coverage and

was condemned by civil society groups and rival political parties.

It is not clear if the veto has been exercised by the DUP (or any other party) since this time. There were rumblings from the DUP in January that they would consider using a cross-community vote to protect the transfer test and academic selection - something which ultimately did not come to pass. However, that the use of the veto was again considered remains significant.

The scope of the right to health in this context

The 'Right to Health' is found in a number of international standards, including under Article 12 of the UN Economic, Social and Cultural Rights Covenant (ICESCR), ratified by the UK and hence binding on NI public authorities as a matter of international law. Among the core obligations of the ICESCR right of 'comparable priority' are the taking of 'measures to prevent, treat and control epidemic' diseases. However, in the absence of the Bill of Rights, the right to health is not yet directly enforceable in NI courts.

In general, the right to health includes broad programmatic duties, but it can be breached by extreme government acts. In determining what actions or omissions amount to a violation of the right to health, a distinction is made between the inability of a state to comply with its obligations and an unwillingness to do so.

Violations can occur by the adoption of 'retrogressive measures' incompatible with any of the core obligations, and the failure to take appropriate steps to realise everyone's highest attainable standard of health.

Violations can also occur through state actions and policy decisions that are likely to result in unnecessary morbidity and preventable mortality, including misrepresentation of information vital to health protection

At the time the DUP used the St Andrews Veto to block the extension of the circuit breaker, NI was in a grave situation due to the pandemic. Proportionately, the number of deaths in NI was running at four times that of the Republic of Ireland, where greater restrictions had been imposed. The health service also risked being overwhelmed with thousands of health workers already Covid positive or self-isolating, some very sick, and some tragically having already lost their lives.

In such a context in order to comply with the 'right to health' it follows that there would need to have been



compelling reasons for Ministers to act against scientific and medical advice and block the extension of public health measures. Had the Bill of Rights been in place, the use of the St Andrews Veto in this context could potentially have been found to be unlawful, and hence overturned by the courts.

While some insight can be gathered from the public statements of DUP Ministers to ascertain their reasoning for invoking the St Andrews Veto, this could have been more fully probed in the face of a 'right to health' legal challenge. Had the Bill of Rights already been in place - making the right to health enforceable through the courts - this could in itself have acted as a constraining factor because Ministers would likely have been advised they were acting unlawfully by exercising the veto in this way.

As things stand, this episode is a clear illustration of both the need for a Bill of Rights in NI and for the reform (or removal) of the cross-community vetoes to ensure they can not be used to block necessary health measures or equality and rights duties.

Further reading

The Equality Coalition, which is co-convened by CAJ and UNISON, published a briefing paper in November 2020 looking in more detail the DUP's use of the veto during the pandemic.

This is available for free download via the following link:
<https://bit.ly/3nF3HKz>

A Bill of Rights – Now more than ever.

Helen Flynn, Human Rights Officer, Northern Ireland Human Rights Consortium

A Bill of Rights remains of continuing relevance to our ever challenging political and legal landscape in Northern Ireland. It fundamentally offers a range of possible legal protections and mechanisms for addressing our substantial rights deficits locally. Issues from our post-Brexit landscape, political instability at Stormont through to debates and anxieties about our constitutional future have all created a need for further rights frameworks in Northern Ireland. But the other area where the value of a Bill of Rights has become increasingly relevant is in our response to the Covid-19 pandemic and attempts to build back a better and fairer society.

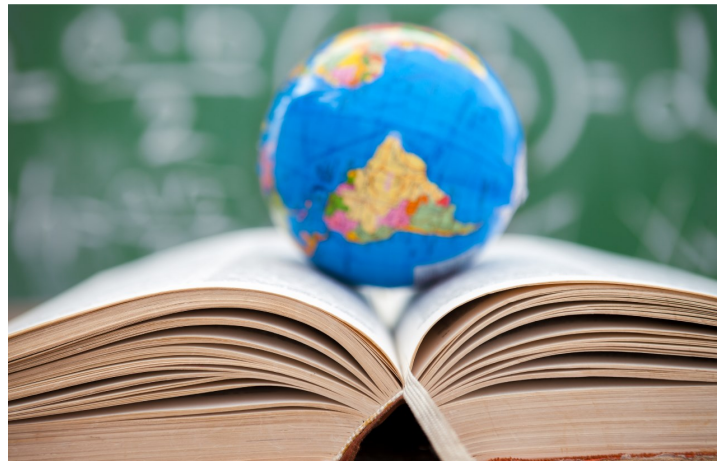
Significant gaps in the protections of rights in Northern Ireland have long existed before Covid-19, but the pandemic and our responses to it have meant that these gaps have been further exposed and felt more keenly.

The range of rights impacted by Covid-19 locally has been broad. But to take just one right as an example, the right to education, it is possible to explore what role a Bill of Rights could have possibly played in the past year to protect us from some of the additional rights violations that occurred.

In General Comment No.13, the UN Committee on Economic, Cultural and Social Rights notes, *“Education is both a human right in itself and an indispensable means of realizing other human rights.”* The closure of schools, a measure introduced to protect public health, has meant that for substantive periods of the last year that most children received or are receiving their education at home. This has several implications for the right to education.

The digital divide in Northern Ireland means that 8.5% of homes in Northern Ireland have inadequate access to the internet (Source: [PPR’s campaign](#) ‘Internet4All’). In addition, the Office of National Statistics stated in a 2019 report, *Exploring the UK’s Digital Divide*, that, in 2018, 14.2% of the population in Northern Ireland were internet non-users. The lack of adequate access to the internet for home learning impacts two groups of children (and sometimes these groups overlap) in particular – those from geographic locations (usually rural areas) where there is no reliable access to broadband and those from homes where income is lower and therefore reliable broadband is not an affordable option.

On the right to education, Article 13 of the International Covenant on Economic, Social and Cultural Rights (CESCR) states, *“2. The States Parties to the present Covenant*



recognize that, with a view to achieving the full realization of this right: Primary education shall be compulsory and available free to all.”

In addition, in general comment 13, on the right to education the Committee on Economic, Social and Cultural Rights states, *“Accessibility - educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party.”*

Northern Ireland authorities have made some attempts to try to rectify this digital imbalance. In May 2020, the Education Authority in Northern Ireland began to lend digital devices to “children who would benefit most in terms of supporting their learning”, and worked to ensure there was free wi-fi and mobile connectivity (announced in July 2020) to children fitting the same criteria to ameliorate some of this inequality. However, despite these efforts the gap remains significant.

Another major concern that has been raised in relation to the right to education is the provisions in place for children with special educational needs. While special schools have remained open during this latest lockdown, this was not the case during earlier lockdowns and additionally not every child with special needs attends a specific special needs school.

The [Coronavirus Act 2020 Temporary Modification of Education Duties](#) temporarily diluted the education authorities previous legal duty to provide education for all to a requirement to ‘do their best’ in this regard. This has had serious repercussions for the education, health and protection of pupils with Special Educational Needs – see, for example, this [case study](#) from the Children’s Law Centre. With some students no longer getting the suite of support they had previously enjoyed in special educational needs settings, while other students were unable to fully engage with remote learning due to the nature of their disability (such as being deaf or blind) and as a result significantly setting back their educational attainment.

A requirement for accessible learning is supported by

international legal standards. In addition to the general CESCR comment above, another relevant text in interpreting how the right to education has not been met is the Convention on the Rights of Persons with Disabilities (CRPD). Article 24 of this Convention (to which the UK is a signatory) deals with the right to education, and amongst its provisions states: *"2. In realizing this right, States Parties shall ensure that: (a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability."*

And: *"3(c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development."*

In addition, general comment No. 4 from the CRPD includes the following: *"22. Consistent with article 9 of the Convention and with the Committee's general comment No. 2 (2014) on accessibility, educational institutions and programmes must be accessible to everyone, without discrimination. The entire education system must be accessible, including buildings, **information and communications tools** (comprising ambient or frequency modulation assistive systems), the curriculum, educational materials, teaching methods, assessments and language and support services."*

These various international standards are not currently accessible via domestic law in Northern Ireland despite the UK Governments commitment to uphold them within its territory. The Human Rights Act provides for a Right to Education in Protocol 1, Article 2, but it has historically proven to be a narrowly defined right that has not yielded significant outcomes in this context.

Depending upon the nature of its incorporation and enforcement within a Northern Ireland Bill of Rights, a positively framed right to education in this situation could have provided the parents or guardians of children experiencing the disadvantages and inequalities in accessing education with a means to redress the closure of Special Educational Needs settings or digital inequalities. It could alternatively or additionally have performed a significant pre-legislative scrutiny function at the Northern Ireland Assembly and highlighted the potential risk to vulnerable groups from a blanket closure approach or move to online learning. The existence of such a right, with associated duties on public authorities, could have also significantly enhanced the internal decision-making processes (to ensure compliance with a

right to education in decisions, policies, and legislation) by the Education Authority and the Department for Education.

In this third phase of lockdown there continue to be significant digital divide concerns, but this time around Special Schools have remained open, with staff and pupils being placed on a priority list for the recently launched vaccination. The Department for Education and Education Authority have rightly attempted to take account of the evidence and expertise of families and experts in the field.

The achievement of rights in this regard is very much a spectrum of development, with clear signs that public authorities are willing to learn from their mistakes. But a properly constituted right to education would have likely triggered important safeguards and checks at a public authority level or given families and students a more accessible and statutory mechanism to challenge discriminatory decisions.

If international standards were enforceable in domestic legislation, then students in these circumstances could have had very different experience of the right to education during the pandemic. Weaving these standards into how decisions are made by government and local authorities could see much more just and tailored outcomes for children and young people here, and any failures could ultimately be challenged via legal mechanism if all other avenues failed.

We are not currently using valuable tools and safeguards like ICESCR, the CRPD, or indeed CRC (Convention on the Rights of the Child) to help us to interpret how the right to education should be achieved locally. A Bill of Rights is clearly a vehicle that could help us bring these provisions into our law here, so that people could have further practical access to these important rights.

This is only a small snapshot of one of the many issues people have faced when trying to realise a single right, but it illustrates how things could potentially be done differently with a Bill of Rights.

To find out more about why we need a Bill of Rights for Northern Ireland, please check out our new campaign to [Make Our Future Fair](#).



**MAKE
OUR
FUTURE
FAIR**

Legal action on lack of abortion services in Northern Ireland

Les Allamby, Chief Commissioner, NIHRC

The NIHRC is again having to go to court on the issue of human rights and access to abortion services in NI. In July 2019, Westminster passed the NI (Executive Formation etc) Act 2019 which includes at Section 9 a requirement on the Secretary of State (SoS) for NI to implement in full the recommendations of the UN CEDAW inquiry into abortion in Northern Ireland. The inquiry had held that the (then) law in NI created grave and serious violations of human rights. Key recommendations included the decriminalisation of abortion in NI and that access to safe and free abortion should be introduced locally with the NIHRC monitoring the implementation.

The Act provided for decriminalisation from 22 October 2019, unless the NI Executive (then suspended) had been restored and the introduction of abortion law reform by 31 March 2020. Following a consultation process the NIO introduced the Abortion (NI) (No 2) Regulations, paving the way for the commencement of a service. Abortion was now to be provided without conditions for up to 12 weeks gestation and where there is a risk to physical or mental health up to 24 weeks. The five health and social care trusts prepared to provide a service across NI and did so after a false start when the services were pulled following a message not to commence provision from the Department of Health (NI) which was countermanded by a letter ten days later from the Chief Medical Officer for NI, who outlined the Trusts were entitled to proceed. At first, two trusts provided a service which was extended across all five trusts within two months.

The DoH(NI) sent a paper on the issue to the NI Executive in April which did not get agreement and produced a second paper in May 2020, requesting agreement to commission a service which has never been discussed. Over the summer, under Covid-19 monies, a funding application was produced to cover all five trusts continuing abortion services including training and appropriate pathways for the rest of the financial year. The bid was never considered by the Health and Social Care Board (HSCB), at least in part due to the failure of the Department to secure agreement at the NI Executive to commission a service.

In our monitoring, we have met with the Trust providers, both clinicians and managers; the Royal Colleges of Midwives; Nurses, GPs, Obstetricians, Gynaecologists, and Pharmacists; and the Board and Department; the Regulation & Quality Improvement Authority (RQIA); the British Pregnancy Advisory Service (BPAS); and providers of unregulated services on the web. The Commission organised a round table attended by organisations supporting the reform and those avowedly against it, and met with both pro-choice and pro-life organizations separately. In meetings, managers and clinicians have time and

again made the point that health care providers are used to managing risk on a daily basis but, usually within a commissioned and funded framework with the appropriate guidance, information, and support. To date, the DoH(NI) has issued no guidance on how a service should be provided.

The Trusts continued to provide a service by transferring resources from other sexual and reproductive health services, which were in abeyance or facing reduced demands due to the pandemic. Informing Choices NI acted as a referral point for the Trusts, again without any funding for providing a service. Initially, the service was largely confined to early medical abortions of up to 10 weeks, rather than the legal requirements. In October 2020, the Northern Trust ceased to provide a service due to staff constraints, though it was restored with a locum from early January 2021, while the South Eastern Trust ceased to offer the service from 5 January 2021 as the clinical provider went on maternity leave, only to restore it in early February. For women in this trust the options are to travel to England under the alternative pathway for a service, travel elsewhere in Ireland and pay 450 euros, or use unregulated services and obtain pills via the internet. The options to use a regulated service means travelling and this raises public health issues given the current arrangements for tackling the pandemic.

The Commission has now lodged judicial review proceedings against the Secretary of State for NI for failing to meet the legal duty within the 2019 Act, and the NI Executive and DoH(NI) for a breach of Article 8 of the Convention (the right to family and private life). In response the SoS legal representatives have said he is doing all that he reasonably can to persuade the devolved administration to deliver a commissioned service. The DoH(NI) has outlined it is seeking to commission a service, but cannot get NI Executive agreement, and the NI Executive argues it is a matter for the DoH(NI). In effect, it is a perverse game of pass the parcel where the music never stops. The Commission has also put in an affidavit on behalf of a woman who was adversely affected by the decision of the Northern Trust to suspend their service. This will deal with the question whether the Commission can intervene without a victim. The Court has now granted leave to proceed without a hearing against the DoH(NI) and Secretary of State, and is seeking a further legal submission before deciding whether to add the NI Executive to the mix. It is anticipated that the case will be heard at Belfast High Court in May or June 2021.

Resolving the matter locally would be preferable, nonetheless, the duty to see the CEDAW recommendations implemented falls to the Secretary of State who has powers to resolve the matter through Westminster if required. The reality, of course, is that a long-term resolution of ensuring a human rights compliant access to abortion services should be through the legislature and not the courts.

Initial breaches of the UK ‘no diminution’ commitment

Robyn Scott, Communications and Equality Coalition Coordinator, CAJ

The UK has made a commitment that there will be ‘no diminution’ of a number of rights set out in the Good Friday Agreement (GFA) as a result of Brexit. This commitment was first given in the 2017 EU-UK Joint Report and was later backed up by Article 2 of the Ireland/Northern Ireland Protocol to the Withdrawal Agreement (though the wording in this was somewhat watered down when compared to the original). An [explainer document](#) on Article 2 has also been issued directly by the UK government.

Those rights protected are set out in the ‘Rights, Safeguards and Equality of Opportunity’ chapter of the GFA, which you can read in full [here](#). Rights listed in this section include: the right of free political thought; the right to freedom and expression of religion; the right to pursue democratically national and political aspirations; the right to seek constitutional change by peaceful and legitimate means; the right to freely choose one’s place of residence; the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity; the right to freedom from sectarian harassment; and the right of women to full and equal political participation. The rights in question have largely not otherwise been incorporated into domestic law, partly because we still do not have a Bill of Rights for Northern Ireland. Rather EU law has been providing a supporting framework for their realisation.

The EU laws relevant to this commitment are set out in Annex 1 of the Protocol. These laws protect against discrimination on the grounds of gender, racial or ethnic origin, religion or belief, disability, age, or sexual orientation; and require the promotion of equal treatment in areas such as employment, access to goods and services, and social security.

The UK government has committed to ensuring that Northern Ireland’s laws keep pace with future changes to certain EU human rights and equality laws. Essentially, the Protocol commitment means the UK government must ensure that the rights outlined above are not diminished as a result of the UK’s exit from the EU. The UK’s chosen



mechanism for enforcing the ‘no diminution’ includes new powers vested in the Northern Ireland Human Rights Commission (NIHRC) and Equality Coalition for Northern Ireland (ECNI), encompassing new statutory functions to monitor, supervise, advise, report on, and enforce the ‘no diminution’ commitment. These bodies will be able to bring a legal challenge before the domestic UK courts if a breach occurs.

On 1 January 2021, the UK made its official exit from the EU. Despite it still being very early days, CAJ has already identified six different potential breaches of the ‘no diminution’ commitment, which are set out on the following pages.

Breach 1: Civil Service Nationality Rules

GFA right breached: “the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity”

Removal of EU treaty law further to Brexit will end the legal constraint that prevents NI Civil Service (NICS) nationality rules from restricting the entitlement of European Economic Area (EEA) nationals to work in certain (non-public service) civil service roles. This could lead to a diminution of rights for EEA citizens if either Brexit legislation or policy creates a prohibition on their civil service employment.

Breach 2: EU citizens’ democratic rights

GFA rights breached: “the right to pursue democratically national and political aspirations”; “the right of women to full and equal political participation”

The right to political participation is being diminished in a number of ways as a result of Brexit. Despite the UK’s exit

from the EU, Irish citizens, along with citizens of other EU member states in NI, still remain EU citizens - something which leaves NI in the extraordinary circumstance where almost everyone who is born here will either be an EU citizen or entitled to be one. However, these individuals will nonetheless cease to have the right to vote in EU elections due to NI no longer being part of an EU member state, and therefore not represented in the EU parliament. Likewise, EU citizens residing in NI from another member state (who do not also hold British citizenship) will no longer be able to vote in local and NI Assembly elections. The UK has also taken a new policy position that means Irish citizens who were not born in NI will no longer be able to vote in UK referendums, even though they could previously do so.

Breach 3: EU Settlement Scheme cut-off date (family reunification)

GFA right breached: “the right to freely choose one’s place of residence”

Following the much-publicised DeSouza case, the UK government made commitments to bring about changes to the rules of family migration. This case centred on Emma DeSouza challenging the presumption by the Home Office that she was automatically British because she was born in NI – rather than solely Irish – which had led to her husband’s application for an EEA residence card (as the spouse of an EU national living in the UK) being refused. This was in clear breach of the GFA, which recognises the birthright of the ‘people of Northern Ireland’ to identify themselves and be accepted as Irish or British, or both, as they may choose.

The eventual remedy put forward by the UK government was to permit family members of ‘relevant persons of Northern Ireland’ (RPNI) to apply to and gain status under the EU Settlement Scheme (EUSS). However, this is a temporary fix only as the scheme will close on 30 June 2021. After this, these family members will usually have to apply under the significantly more restrictive UK rules, which prevent many families from residing together in the UK - despite their desire to do so- due to their cost, complexity, and draconian application.

This will have a direct and tangible impact on the ability of ‘relevant persons of NI’ to be joined by their family member(s), and to therefore freely choose their place of

residence. As a result of this, there will be a clear diminution of their rights following the end of the transition period and the EUSS.

Breach 4: Loss of EU rights and benefits for Irish citizens from NI

GFA right breached: “the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity”

The Withdrawal Agreement provides protections for the rights of EU citizens residing in the UK after Brexit; they will have broadly the same entitlements to work, study, and to access services and benefits as those derived from UK membership of the EU. These rights are particularly important in cross border situations, which are of course particularly common in Northern Ireland. However, to be covered by the Withdrawal Agreement, an individual will need to demonstrate that they have exercised treaty rights or ‘free movement’ rights in the UK prior to 31 December 2020.

This raises a query over the status of Irish citizens born in Northern Ireland, given that the Home Office policy of treating them as dual British/Irish citizens remains in force. The Home Office has stated that dual British/EU nationals who have not exercised their free movement rights are not covered by the Withdrawal Agreement. This leaves Irish citizens born in Northern Ireland therefore unable to rely on the rights provisions within the agreement, unlike other EU citizens. As the UK government has not provided Irish citizens born in NI with a sufficient alternative to the rights protections within Withdrawal Agreement, this represents a clear diminution of rights for those affected, who could be left with lesser rights protections than those they enjoyed under EU law. This is exacerbated by the fact that they are potentially the only EU citizens in the UK who cannot access protections due to a Home Office policy that has already been challenged as being incompatible with the GFA.

Breach 5: Frontier workers and their family members

GFA rights breached: “the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity”; “the right to freely choose one’s place of residence”; “all participants

recognise the importance of respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland”

Following Brexit, (non-Irish and British) EU frontier workers in Northern Ireland will be required to hold a Frontier Worker Permit by 1 July 2020 to continue frontier working. Due to the lack of engagement, communication, and the late publication of the scheme, it is expected that many workers will not apply to the scheme on time, placing them at risk of losing employment, income, and access to services and benefits. Furthermore, it could become more difficult for family members of EU national frontier workers who reside in ROI to access services in Northern Ireland as they can only gain status through the EU Settlement Scheme (they will not be granted status through the Frontier Worker Permit scheme).

The Centre for Cross Border Studies’ ‘Border People’ project estimates that between 23,000 and 30,000 people in Northern Ireland and the Republic of Ireland are cross-border workers. The loss of EU protections for frontier workers will therefore have a unique and significant impact in Northern Ireland compared to the rest of the UK. Frontier workers who are unable to apply for a permit under the scheme within the limited time frame, or whose application is refused, will suffer a clear diminution of rights to participate in social and economic activity. It is of particular concern that the grounds for refusal and revocation have been drafted in a manner which demonstrates decisions will be made on the grounds of an applicant’s nationality, language, and cultural background, and therefore ethnic background.

Breach 6: Deportation of Irish citizens from NI

GFA rights breached: “the right to freely choose one’s place of residence”

The Immigration and Social Security Coordination (EU withdrawal) Act 2020 inserted an exemption from leave requirement for Irish citizens in the UK, which means an Irish citizen does not require leave to enter or remain in the UK. This fixed an existing gap in the law; however this amendment also allows for the deportation and exclusion of Irish citizens from the UK.

Before Brexit, the UK had two separate deportation regimes - EU law applied to EU citizens and their family members, including Irish citizens; while UK immigration



law applied to non-EU nationals. The latter has a much lower threshold for deportation. Now the UK has left the UK, EU nationals are also subject to UK immigration law, and these lower thresholds for deportation. This should apply to conduct that occurs following 31 December 2020, although there are concerns that this restriction only applies to EU nationals who have obtained status under the EUSS, which would exclude some Irish citizens.

UK government policy has historically been that Irish citizens are only considered for deportation if it is recommended by a court or the Secretary of State for the Home Department deems that the public interest requires it. The UK has stated that it will continue this policy after the UK leaves the EU, but it did not take the opportunity to amend the law to exclude Irish citizens from deportation. Irish citizens are therefore subject to stricter deportation laws once the UK exits the EU.

During the debate on the Immigration Act, the question of Irish citizens born in Northern Ireland was raised and amendment suggested to exclude them from the definition of Irish citizens who can be subject to deportation or exclusion from the UK. This amendment failed and this anomaly remains - where would an Irish citizen from Northern Ireland be deported to? An Irish citizen from Northern Ireland who is deported or excluded from the UK would very clearly be prevented from exercising their right to freely choose their place of residence in NI.

At the turn of the new year, CAJ submitted to both NIHRC and ECNI detailed case studies based on each of these potential breaches, and will continue to monitor the situation going forwards.

Final report on Ireland's Mother and Baby Homes

Fiona Crowley, Research and Legal Manager, Amnesty International Ireland

On 12 January 2021, after almost six years, the [final report](#) of the Commission of Investigation into Mother and Baby Homes (COI) was published. Despite a government commitment to survivors that they would be the first to hear its findings, details had already been leaked to the media. This was the first of many disappointments.

The report has served an important purpose, of course. It confirmed many longstanding reports about the treatment of women and children in these institutions: e.g. horrifically disproportionate child mortality rates, poor conditions, physical and emotional abuse, adoptions without women's full informed consent, and vaccine trials on children without adhering to regulatory or ethical requirements. However, many gaps remain in the facts uncovered and their analysis. For example, there is no finding of forced or illegal adoptions, despite survivor testimonies. More analysis is also needed of evidence indicating possible arbitrary detention and forced labour.

The COI concludes that there is some evidence of racial discrimination in how children were put forward for adoption, but not in how children were treated in the 'homes'. This directly contradicts survivors' testimony of harsher treatment due to their race or membership of the Traveller community. There is very limited information on and analysis of the treatment of women and children with disabilities. The COI notes that it did not receive submissions from disability groups. This raises questions about steps taken to make this process known and accessible to survivors with disabilities and representative groups. More proactive measures could have been taken by the COI to investigate this issue. In some areas, the COI minimises the harm done or potentially done; for instance, it concludes, without presenting evidence, that children were not harmed as a result of the vaccine trials to which they were subjected.

For these and many other reasons, the report has had a mixed response. The ball is now in the Government's court though. It must fulfil its legal obligation to ensure full truth, justice, and reparation for all survivors of human rights abuses in these 'homes'. The government must not claim that the COI is a comprehensive investigation. It must acknowledge the gaps and weaknesses, and take prompt and effective measures to address these. A follow up state investigation is obviously needed on the appalling child mortality rates, through all appropriate means including exhumation of burial sites and human rights-compliant inquests.

The government must pay very careful attention to its formulation of recommendations for providing reparation. Survivors must be able to participate effectively in this, and be consulted on key issues where their interests are affected. They must be treated with respect for their dignity and with humanity.



In this regard, the government must recognise that the COI's recommendations are limited (counselling and medical assistance are the examples given), and those it makes on assessing financial redress are very concerning. The COI draws crude and unjustifiable lines of demarcation around survivors that it recommends be provided with redress. For instance, it recommends that children whose mothers remained with them in these institutions be excluded, presumably on the unfounded basis that they could not have experienced abuses. It recommends benchmarking financial redress for children who were harmed in these 'homes' against what survivors received from the Residential Institutions Redress Scheme, and redress for women against the Magdalene Laundries redress scheme. The nature, severity, and impacts of these children's and women's experiences are not directly analogous. Moreover, both redress schemes have been criticised. UN human rights committees have expressly deemed the Magdalene redress scheme inadequate.

Another government responsibility is to ensure that suspected perpetrators are prosecuted, if enough admissible evidence is gathered of crimes committed against women and children. It must not do as it did in the Magdalene Laundries case, insisting that it was up to individuals to report crimes to the police.

Important lessons must be learnt from this COI process. For instance, international human rights law requires that all aspects of such an investigation be transparent and made public. Confidentiality should only be to the degree lawful, necessary and proportionate to protect the rights of individual victims, witnesses and others. Yet all the COI's hearings, including survivors' and other interviews, were conducted in private, without clear justification. Audio recordings of survivor interviews by the COI's Confidential Committee were destroyed without transcripts being made; some interviewees say they were not told this would happen. Also, survivors have still not been granted access to their personal records and data relating to their experiences in these institutions, including their birth certificates, despite a government commitment in October to correct the law in this area.

Lessons learnt from this process will be relevant for Northern Ireland too, where a full-scale inquiry is also urgently needed into what happened to women and children in Mother and Baby Homes there.

Is Israel an Apartheid State?

Stephen McCloskey, Director, Centre for Global Education

The Israeli human rights organisation, [B'tselem](#), has published a position paper [arguing](#) that: "between the Mediterranean Sea and the Jordan River, the Israeli regime implements laws, practices and state violence designed to cement the supremacy of one group – Jews – over another – Palestinians". This position has been held by Palestinian activists for many years and informed the establishment in 2005 of a Boycott Divestment Sanctions ([BDS](#)) movement by Palestinian civil society modelled on the South African anti-apartheid movement. This comparison went further when, in 2014, Archbishop Desmond Tutu [compared](#) Israel's treatment of the Palestinians to the apartheid regime that discriminated against blacks in his native South Africa.

Interestingly, the publication of B'tselem's paper in January 2021 coincided with international criticism of Israel's Covid-19 vaccination programme. While, Israel had impressively and rapidly rolled out the vaccine to ten per cent of its population it excluded, [according](#) to Amnesty International, "the nearly 5 million Palestinians who live in the West Bank and Gaza Strip, under Israeli military occupation" (editor's note: a minimal number of vaccines have since been given to the Palestinian Authority). Amnesty went on to suggest that "Israel's COVID-19 vaccine programme highlights the institutionalized discrimination that defines the Israeli government's policy towards Palestinians". B'tselem goes further than this by suggesting that the discrimination is systemic, enshrined in legislation, and extends across the sovereign state of Israel and the Palestinian territories.

Why now?

But Israel took control of the occupied Palestinian territories in 1967 so why declare Israel an apartheid state in 2021? Two reasons are offered by B'tselem. First, in 2018, Israel enacted a new nationality bill - 'Basic Law: Israel – the Nation State of the Jewish People'. This, according to B'tselem, "declares the distinction between Jews and non-Jews fundamental and legitimate, and permits institutional discrimination in land management and development, housing, citizenship, language and culture". The second reason for 'why now?', was Israel's [threat](#) in 2020 to annex the West Bank where 600,000 Jewish colonists live in 280 illegal settlements. B'tselem's report challenges the idea that inside its borders Israel is a "permanent democracy" and in the occupied territories its occupation is "temporary", necessitating a "military occupation". In fact, the occupation has extended over fifty years and there "is one regime governing the entire area and the people living in it, based on a single organizing principle". The Occupied Territories can, therefore, no longer be treated as separate from Israel, which means, in terms of monitoring human rights abuses, "it is essential to examine and define the regime that governs the entire area".

Structure of paper

The paper focuses on "four major methods the Israeli regime uses to advance Jewish supremacy": immigration; land;



restrictions of movement; and political participation. The contrasting position toward immigration is stark: any Jew in the world can migrate to Israel – including a West Bank settlement - and receive full citizenship while 'non-Jews have no right to legal status in Israeli-controlled areas'. Palestinians can't immigrate to Israeli-controlled areas or relocate to Israeli territory if they live in the West Bank. Section two argues that 'land is a resource "meant almost exclusively to benefit the Jewish public"'. While settlements are developed apace, Palestinians are "dispossessed and corralled into small, crowded enclaves" and discriminatory laws heavily constrict their right to construction. "The geographic space, which is contiguous for Jews, is a fragmented mosaic for Palestinians", argues B'tselem.

Section three concerns freedom of movement which is almost unlimited for citizens of Israel but severely restricted for Palestinians within the West Bank and between the West Bank and Gaza. Section four finds that "the right of Palestinian citizens to political participation is under constant attack". Even if Palestinian elections in the Occupied Territories were regularly held (they were last conducted in 2006), Israel still maintains "major aspects of governance".

Discussion

The fact that the B'tselem paper has been published by an Israeli human rights group is important and it has drawn international attention to the discriminatory legal practices that maintain the social, economic, political, and cultural marginalisation and inequalities experienced by Arab Israelis and Palestinians living under occupation. The paper distinguishes South African apartheid, which was based on "race and skin color", and Israel's system that's based on "nationality and ethnicity". However, it argues that no two systems of apartheid are identical, but suggests that apartheid refers to a "regime's organising principle" that promotes the "dominance of one group over another". The rapid colonisation and settlement construction programme in the West Bank and the terrible suffering endured by two million Palestinians under siege in Gaza, have framed the urgency and timing of this paper. It demands an immediate response, particularly by the EU and its members, who for too long have maintained a position of either complicit silence on the treatment of Palestinians or failed to translate the condemnation of settlement construction and the siege of Gaza into anything like effective action.

Deliberating Constitutional Futures

Rory O'Connell and Eilish Rooney, Transitional Justice Institute

The recent suggestion of Sinn Féin's leader Mary Lou McDonald that there would be a united Ireland within ten years provoked diverse reactions. Without commenting specifically on that prediction, it prompted us to reflect that in 2010 few commentators if any foresaw that the UK would leave the EU (including the single market and customs union) ten years later. Change happens, sometimes unexpectedly and rapidly.

But the Brexit vote is not alone a reminder that decisive change happens unpredictably; Brexit creates dilemmas for this jurisdiction, not least because a majority of the people here voted against Brexit (as they did in Scotland). The Good Friday or Belfast Agreement had found rights and equality-based solutions to difficult questions about sovereignty, identity, and borders. Brexit has unsettled them and led to calls for a border poll on Irish unification.

The Brexit vote is also a reminder that referendums have been increasingly used to resolve major constitutional questions in the 21st century, such as abortion and equal marriage in Ireland. Sometimes referendums have been controversial – the vote on the Colombian peace process for instance, the vote to change the Turkish constitution, the Brexit vote itself.

All of this means that those considering the possibility of a border poll here can reflect on the lessons from elsewhere. It was in this spirit that the Transitional Justice Institute (TJI) brought together experts in law, political science and the broader social sciences for a workshop on 'Deliberating Constitutional Futures'. The event was held on 18 February 2020, with an official report on the proceedings and discussions subsequently published in November 2020.

This workshop reflected two main themes, as noted by TJI Director Catherine O'Rourke in her foreword to the report. These were: the importance of learning from comparative and international experience, and the importance of encouraging participation. Participation was central to the day and the workshop featured a very engaged audience whose contributions are recorded in the report.

The need to prepare for a possible border poll and to discuss the relevant issues was emphasised by several speakers including Alan Whysall (UCL) and Colin Harvey (QUB). The need for discussion and preparation applies even though a vote may neither be imminent (Alan) nor 'next Wednesday' (Colin).



Speakers highlighted the political and legal complexities involved; Cathy Gormley-Heenan (Ulster) reflected on the nationalist boycott of the 1973 border poll for any future referendum. Conor O'Mahony (Cork) reflected on different approaches to key issues like voter education, media regulation and funding. Rory O'Connell (Ulster) examined the potential role of human rights law, though cautioning that this was unlikely to be very prescriptive.

Referendums may be problematic if they encourage people simply to vote their preferences rather than engaging in reflection and deliberation. Jane Suiter (DCU) examined Ireland's promising exercises in combining deliberative democratic initiatives with direct democracy. Silvia Suteu demonstrated how the Scottish Government had sought to provide voters in the Scottish Independence referendum with information so they could make an informed choice. The importance of 'losers' consent' and how that might be encouraged was discussed by Richard Wyn-Jones (Cardiff) in the context of Welsh referendums.

Fidelma Ashe and Eilish Rooney encouraged feminist reflections on what participation actually means. Fidelma argued that women's participation in these debates must not be merely symbolic or signifiers for particular positions. Eilish outlined a model of encouraging grassroots conversations using flash cards to get participants to consider different issues. Our opening speaker, Aoife O'Donoghue (Durham) offered an analysis of the international law dimension and an exploration of what feminist referendums might look like, finishing with a call for 'imagination' and the expertise of experience.

The report *Deliberating Constitutional Futures* is available to download at <https://pure.ulster.ac.uk/en/publications/deliberating-constitutional-futures>.

A video of the report launch, featuring Andrée Murphy, Alex Kane and Avila Kilmurray is available on <https://www.youtube.com/user/UlsterTJI>.

The impact of Covid-19 on children and young people with vision impairment in education

Karen Wilson, Education Advocate, Angel Eyes NI

With dawn rising over 2021, children, and young people (CYP) find themselves yet again plummeted into a period of school closure. It is undeniable, the impact of school closures is felt greatest by those most vulnerable in our society, including CYP with Special Educational Needs (SEN). A report released by Angel Eyes NI, during the first lockdown, [*Widening Inequalities in Education for Children and Young People with Vision Impairment*](#) (July 2020), captures the disproportional educational challenges experienced by CYP with this disability; a low incidence disability that has a high impact on educational access. As we quickly approach the closing of a year living in the Covid-19 pandemic, it is pertinent we reflect on the learning of this report to question whether things are improving for this cohort of children.

Angel Eyes NI (AENI) is a local charity supporting over 700 families of children with vision impairment. Like most third sector organisations, the pandemic has put unfathomable strain on its services, including its Education Advocacy Service. Following a survey of 116 respondents, the charity released a report capturing the voice of its service users. This exemplifies how the concerns raised in the Equality Commission's [*COVID-19 and Education*](#) (June 2020) report were playing-out for this group of children, with existing inequalities being exacerbated through the challenges of home-learning. The results clearly indicated a need for review of educational provision, with 60% of families reporting they received inaccessible resources from teachers and schools during this period, and 62% having to adapt resources, to meet the needs of their child. Additionally, only 27% of respondents had printed books their CYP could access/ read.

Further to this, a Freedom of Information Request submitted to the Education Authority (EA) at this time revealed only 13% of CYP with vision impairment were in receipt of an assistive technology device (i.e., either iPad or laptop) to facilitate learning, through its Vision Support Service. Research has shown the many positive benefits that technology can have on SEN pupil attainment. Assistive technology and the acquisition of the skills and knowledge for its effective use, can be a game changer for people with a vision impairment, but especially for children in their vital, and irreplaceable, developmental years. Proficient use of technology assists with curriculum access, mobility, and independence. However, despite finding themselves in a time of remote learning, many CYP continue to not avail of technology for learning, nor worryingly for this cohort, do they receive teaching and learning of how to use assistive technology.

The survey also revealed systemic issues around transparent and positive communication, with many families having



reported feelings of isolation and heightening anxieties in their CYP. Whilst 79% of respondents were in touch with their child's school, only 20% had received communication with their child's Qualified Teacher for Vision Impairment; a Specialist SEN Support Service provided by the EA. The lack of communication was most profoundly felt by families whose children normally attend Special Schools. Many families of CYP with vision impairment and complex needs have been shielding since February 2020, and have been unable to access educational, therapeutic, and respite services.

As the curtain falls on this trying 'pandemic year,' we should ask ourselves what mechanisms are being put in place to redress the problems in educational provision, and to close the gap for CYP with SEN? On 10 January Education Minister, Peter Weir, outlined a significant investment of £7 million to support remote learning. Technology Poverty (a phrase first coined in the 1st lockdown) is to be redressed with investment in internet bandwidth and the purchase of devices for pupils' home learning. This is complementary to many schools now endeavouring to use technology to provide live teaching/ classes for pupils. Such improvements are greatly welcomed; however, it is important that we ensure that these measures have a positive affect on the CYP who have been consistently left behind, or worse, left out, from learning during Covid-19. The Education Endowment Foundation report, [*Best Evidence on Supporting Students to Learn Remotely*](#) (April 2020), states it is the quality of teaching that is crucial, with pedagogy trumping format. Whether teaching happens live online or through recorded video lessons, or a mix of both, what matters is that the key elements of effective teaching are present, with explanations building clearly on pupils prior learning and with assessment planned for and implemented.

Therefore, it is pertinent that the third sector again collate data directly from families and service users, to ascertain if and how children with SEN are accessing education, and what impact these developments are having on closing the gap for our most vulnerable children. In the coming weeks, AENI will gather further quantitative and qualitative information to help scrutinise the impact of the third lockdown on the educational experiences of CYP with vision impairment.

Civil Liberties Diary - Dec 2020 & Jan 2021

Compiled by Hanna McKee from various newspapers and websites

2 December 2020: The Victims and Survivors Service, which focuses on victims of the Troubles, has launched a new support service for victims or survivors of institutional abuse. The service offers health and wellbeing support, welfare advice, social support, and talking therapies. The service is a step toward meeting recommendations by the Historical Institutional Abuse Inquiry that includes compensation, a public apology, and better support for victims.

2 December 2020: A new report from the Northern Ireland Audit Office (NIAO) has found that there has been a lack of progress on the reform of the youth justice system in NI. Following a highly critical report published in 2017, the Department of Justice and Youth Justice Agency agreed upon a new strategic plan to implement change, called *Transitioning Youth Justice*. However, NIAO's follow-up review argues that further work is still needed.

3 December 2020: A transgender woman has brought forward judicial review proceedings stating the requirement to have a medical diagnosis to obtain a gender recognition certificate (GRC) is in breach of her human rights. The case has begun in the High Court and places a primary focus on the Gender Recognition Act 2004 for a diagnosis of gender dysphoria. The applicant argues this is stigmatising for the transgender community. The issue is long-standing in NI, but many from within the transgender community believe the government has not taken sufficient steps to address the human rights concerns.

5 December 2020: The UK government has committed to ensuring that there are safeguards in place to protect equality of opportunity under the Good Friday Agreement, and to ensure that there is no diminution of rights as the UK withdraws from the EU. The NI Human Rights Commission and Equality Commission for NI will take on additional powers in 2021 to protect equality and human rights in NI. They will also work alongside the Irish

Equality and Human Rights Commission to oversee equalities and rights that have an Island of Ireland dimension.

8 December 2020: A crucial bill to enhance NI's domestic abuse legislation has been postponed, with Justice Minister Naomi Long claiming she has "no choice" to take this step due to the financial implications of a proposal to widen access to legal aid for victims and survivors in child contact cases. The bill was due to pass in early December, but it is now unclear when the bill will pass its final stages.

11 January 2021: The government is facing a new call to release a report on compensation for victims of the IRA that involved weapons supplied by Libya. The report was received by the government in May 2020 and the Northern Ireland Affairs Committee has warned that it may use powers to compel the government to make it public. A Foreign Office spokesperson gave a statement claiming that ministers are currently considering the "complex issues" that were raised in the report.

12 January 2021: The NIHRC has begun legal action against the Secretary of State and Department of Health for the failure to set up abortion services in NI after more than nine months since terminations were legalised. The Department of Health has not commissioned or funded any termination services, or provided guidance to health and social care trusts. The lack of services is affecting many women and, according to NIHRC, breaches the European Convention on Human Rights.

13 January 2021: The NI Health Minister has approved funding for a new perinatal mental health service that will provide multi-disciplinary mental health teams in each of the five trust areas. Currently the Belfast Trust offers perinatal mental health services, but they are limited. The Department of Health commented that the psychological impact of the Covid-19 pandemic on perinatal women should not be overlooked, as they are particularly



vulnerable. The new services involve community teams providing mental health and maternity care before and around the time of birth for those women struggling with mental health issues.

15 January 2021: A new scheme launched by the UK Government allows victims of domestic abuse in NI to discreetly access help through pharmacies. The 'Ask for NI' scheme will initially be available in Boots and a various independent pharmacies with promotional material displayed in store to show they are taking part. The scheme allows victims to use a discreet signal to indicate that they need help and access to support. In response, a trained pharmacy employee will offer a private space to understand if the victim needs to contact police or access to the 24-hour Domestic and Sexual Abuse Helpline.

29 January 2021: There have been widespread calls for an inquiry into the mother-and-baby homes in NI, following the publication of research into the homes, which was commissioned by the Department and examined eight mother-and-baby homes and four Magdalene Laundries. First Minister Arlene Foster has confirmed she would support a new independent investigation. The leader of the Catholic Church in Ireland also indicated his support for a public inquiry, and agreed that victims of the mother-and-baby homes should be entitled to compensation.

29 January 2021: Northern Ireland's South Eastern Health and Social Care Trust will provide early abortion services from Monday 1 February. The trust was forced to disband early abortion services for over a third of a million people in Lisburn, North Down, Ards and Down. Women were forced to purchase abortion pills online or risk travelling to England to access vital abortion services in the midst of a national lockdown.