



How Could Minority and Women's Rights be Protected in a United Ireland?

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How could
MINORITY and
WOMEN'S
♀ RIGHTS
be protected in a
UNITED
IRELAND?

A seminar hosted by the Equality
Coalition and the Transitional Justice
Institute, supported by the LSE Gender,
Justice and Security Hub.



15 November 2023

Equality
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Justice Institute

Contents

Introduction	02
Rory O’Connell, Professor of Human Rights and Constitutional Law, Ulster University Daniel Holder, Director of the Committee on the Administration of Justice	
Panel 1: Minority Rights	
Chair: Colin Harvey, Professor of Human Rights Law, Queen’s University of Belfast	
More than geography – cross-border constitutionalism after unification	05
Colin Murray, Professor of Law & Democracy, Newcastle Law School, Newcastle University	
Protecting Unionists’ rights in a united Ireland	10
Brice Dickson, Emeritus Professor of Law, Queen’s University Belfast	
Linguistic minorities in a united Ireland: The Irish speaking community	13
Róisín Nic Liam, Iníon léinn PhD i Roinn na Gaeilge agus an Léinn Cheiltigh, Ollscoil na Banríona, Béal Feirste	
Panel 2: Women’s Rights	
Chair: Patricia McKeown, Regional Secretary UNISON	
Protecting women’s rights in a united Ireland	18
Fionnuala Ní Aoláin, Regents Professor, Law School, University of Minnesota and Professor of Law, Queen’s University Belfast	
More than a democratic right: Women’s participation in constitutional change	22
Fidelma Ashe, Professor of Politics, Transitional Justice Institute, Ulster University	
How could women’s rights be protected in a united Ireland?	26
Joanna McMinn, Research Associate, School of Law, Ulster University	
What do we mean by ‘women’s rights’ and how do we guarantee them?	30
Elaine Croy, Women’s Resource and Development Agency	
Biographies of the speakers	33

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Welcome

Rory O'Connell, Ulster University

It is a real pleasure to welcome you to this event with the Equality Coalition and Transitional Justice Institute, This event is supported by the Gender Justice and Security Hub, which is one of the Global Challenges Research Fund research hubs. TJI and the Committee on the Administration of Justice, along with colleagues from Queen's University, Belfast, are part of this Research Hub composed of projects across the globe, everywhere from Afghanistan to Colombia, from Sri Lanka to Sierra Leone.

One of the research questions of the Hub is what does a radically transformed future look like. And a united Ireland could well be a radically transformed future.

So we are going to be discussing: How could how could minority and women's rights be protected in a united Ireland? And this discussion about a united Ireland or a border poll is something that was brought much more into the public consciousness by the events of the Brexit referendum in 2016. TJI has been one of the institutions academically working on this and our work has been distinctive in that we have brought to the fore issues around equality and participation, in particular in these debates about border poll and unification.

In that spirit that we've brought together two wonderful panels of experts who have been contributing to these public debates over many years to look at the issues about minority rights and women's rights.

Introduction

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

The Equality Coalition, for those not familiar, is a network of over 100 trade unions and equality NGOs that is co-convened by my own organisation, CAJ, and the trade union UNISON.

We have worked across a range of equality issues for the last 25-30 years. We might not have used the particular phrase **'constitutional conversations'** much before. However, when you look back a lot of things we have been doing they would comfortably fit within that concept. Most of them would have been focused on reforming Northern Ireland within the UK, in particular pressing for implementation of commitments that are outstanding from the peace agreements that would set the constitutional framework for Northern Ireland governance. This includes the Bill of Rights and broader rights-based safeguards that were committed to as a part of the peace settlement but that have not really been implemented.

This seminar is the second in the series. The first one, last month, looked at that question again of reform of Northern Ireland – specifically the question 'Could rights-based safeguards save Stormont?' In this, we explored the rights-based sort of framework that was supposed to be in place as part of the peace agreements versus what has actually happened to the

Stormont institutions and lies at the root of their dysfunctionality when they are up and running.

This is the first seminar we have held that is focusing specifically on the question of a constitutional framework within a united Ireland and how that could afford rights protections.

We also held an internal seminar in April, as it was too risky to hold it in public, of Equality Coalition members to talk about the current state of freedom of expression for the sector. The amount of groups within civil society who are still facing levels of intimidation and attacks either for work on constitutional change but also for work on various other things, be it Brexit, be it feminist groups, be it other member organisations of the Coalition, Irish speakers, others, is shocking. We reflected on the framework of the Belfast (Good Friday) Agreement 1998, and that had affirmed a number of rights: right to free political thought, right to pursue democratic national political aspirations, right to see constitutional change by peaceful and legitimate means, the right to woman to full and equal political participation, freedom from sectarian harassment; and discussed how that context had not been realised in light of the current climate.

That provides a broader backdrop context for today when we will look at this question: 'what would the blueprint for a new constitutional framework for a united Ireland look like?' Clearly it is important to avoid that type of Brexit situation where there is a referendum without a blueprint for what happens next. Another context for today is that these constitutional conversations are happening – but we see there are significant gaps in them on the issues around rights protection.

Electorally also we could be by late next year already be into a more official Scottish style process of planning a constitutional framework. If so, how loud will the issues of rights protection be heard within that discussion? Unless I have missed something, I think a number of the specific issues that are to be discussed today by the panels have not had a significant airing, including issues around minority rights and women's rights.



Panel 1: Minority Rights

Chair: Colin Harvey, Queen's University of Belfast



Seminar presenters: (from L-R) Colin Murray, Colin Harvey, Brice Dickson and Róisín Nic Liam

Thank you to the Transitional Justice Institute, Equality Coalition and the Gender, Justice and Security Hub for organising this discussion and for the invitation to participate. I am Professor Colin Harvey of Queen's University Belfast. You are all very welcome to the Panel on protecting minority rights.

Now that I have the opportunity to do so in person: a personal thank you to those who have taken the risk of expressing solidarity and support. I do not take any of it for granted and it is deeply appreciated.

People here have a choice about their constitutional future. It is unsurprising that there is serious reflection on the implications of an available and entirely legitimate option. And, of course, we are all promised - time and again - we have a right to take part in these conversations.

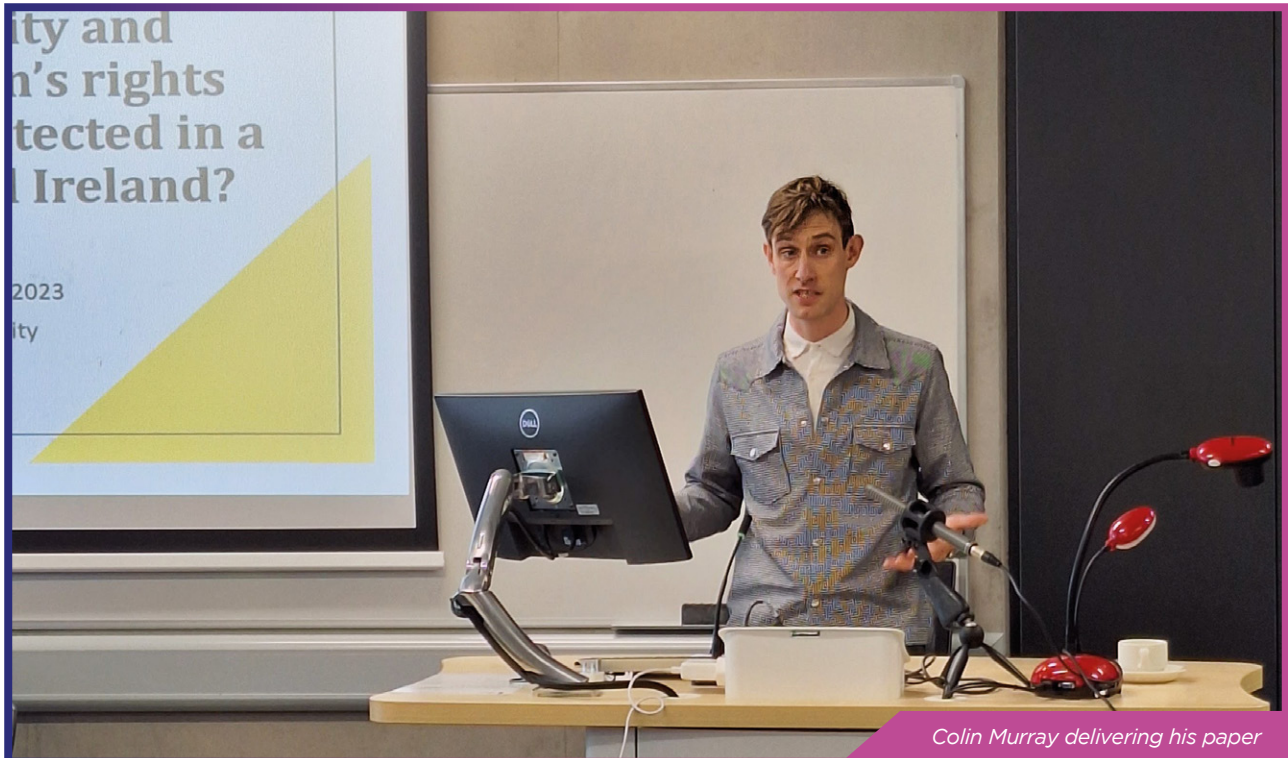
We are concentrating today on the detail of the possible implications of constitutional change, including options, guarantees, protections and assurances. There is a focus on the equality and human rights impact, with three presentations and three themes: Cross-border constitutionalism after reunification; the rights of unionists in a united Ireland; and the rights of linguistic minorities – using the example of the Irish speaking community.

This is a significant event and a necessary discussion. It forms part of evolving deliberations about what constitutional change will mean in practical terms, particularly for those who are inspired by the transformative potential of the process.

Thank you to the organisers for making this happen and to you all for your participation and engagement.

More than geography – cross-border constitutionalism after unification

Colin Murray, Professor of Law & Democracy, Newcastle Law School, Newcastle University



Colin Murray delivering his paper

It is hardwired into the Belfast (Good Friday) Agreement 1998 that we all have the right to discuss the constitutional arrangements under which we are governed. As a constitutional lawyer I am predisposed to such conversations, but to have so many people in the room and online for this event is a really exciting thing.

The ability to discuss these arrangements is empowering for people. We have a set of arrangements that people in this place have the choice to shape and it therefore is

our duty to have as detailed and informed a conversation as possible to enable people to make those choices, because uninformed choices in the context of constitutional change are meaningless. We live in the aftermath of ill-thought through constitutional conversations around the Brexit referendum in 2016. **People need to understand the ramifications of what is happening in terms of the constitutional future of these islands**, and it is impossible to do that without events like this one.

The themes that I address here overlap with those which are tackled by Professor Dickson in his paper. What I want to try to disaggregate, therefore, are the formal protections for minority rights that would need to develop in a reunification Ireland (issues which I will largely leave to Professor Dickson) and some of the procedures and institutional structures that will overarch those arrangements.

I think one of the fallacies that we fall into when we talk about constitutional change and Northern Ireland and Ireland reunifying or a change in that constitutional relationship is that we think about it in stark terms of statehood. And we imagine all of these ticky-tacky boxes of what amounts to a state and that the state is central to our understanding of international relations in general. But we are living in a world where national sovereignty is increasingly mutable and needs to be seen in a web of interconnectedness that deals with the challenges of people moving around in the world in the 21st century, in a world where environmental challenges impact globally, and an idea of national sovereignty, pure and unalloyed, is not necessarily going to address those challenges.

Therefore, when I talk about cross-border constitutionalism and this space, it is important to recognise that this is something that is already happening and the question is how this will adapt in the

event of the reunification of Ireland. This first raises the question of what might be a residual post-sovereignty rule for the United Kingdom in the context of a reunified Ireland? The easy answer that the 1998 Agreement envisages that with a shift of state, the governance of Northern Ireland will be transferred to Ireland and Ireland's statehood will be complete in that context.

But if we consider historical comparisons of shifts in statehood, we find examples like Hong Kong in the recent past and we see agreements which cover a broad range of issues and make provision for distinct or transitional arrangements. The UK-China treaty with regard to Hong Kong was supposed to cover 50 years after the period of Hong Kong being returned to China. Now we are halfway through that period and the tensions that have arisen around that are perhaps clear for all to see now.

The 1998 Agreement sets up a different sort of framework. It sets up a set of 'continuing' provisions that move with state, in particular the rigorous impartiality duty and duties around people's ability to identify as British or Irish or both. There is no time limit on those arrangements in the same way there is in the UK China treaty with regard to Hong Kong. There will thus be a continuing co-guarantor role for the United Kingdom with regard to those protections, much as Ireland asserts at the moment, following a transfer of sovereignty.

Although the transfer of sovereignty might superficially resemble arrangements for Hong Kong, the context is profoundly different. We are talking about countries that are liberal democracies and that have embedded sets of rights arrangements and embedded sets of minority protections underpinned by international commitments. There is already a set of bedrock in place that did not exist whenever we consider the upheavals which preceded the partition in Ireland in 1922. We are therefore discussing a firm set of foundations that we can build upon in relation to reunification, something that we do not have to construct from the ground up.

The Common Travel Area was created in 1922 to manage the difficulties of having a land border suddenly come into effect on this island. And I do not want to minimise just how significant that was, because the land borders went up all across Europe that did not exist before in the aftermath of the First World War, and there were very few efforts to immediately mitigate them at that time. Ireland and the United Kingdom were able to make something work even in the teeth of fraught relations after the War of Independence and a century on, as a result of a mutual set of advantages that both polities derived at that time. The UK had an acute need for movement of labour from Ireland into its industries. Ireland needed to be able to manage population through movement between these islands, and

that mutual advantage underpinned the Common Travel Area arrangement.

But the industrial population of mill towns is no longer a pressing concern, so what now underpins the Common Travel Area? How does it fit with Ireland having a set of obligations as being a continuing EU member state? Currently, Protocol 21 to the Treaty on the Functioning of the European Union and Article 3 of the Protocol, as amended by the Windsor Framework, allow for Ireland to maintain the Common Travel Area. In the event of reunification there is still that bedrock in EU law for Ireland to be separated out from the general obligation on EU member States to become part of the Schengen free movement area.

But that has brought disadvantages for many people on these islands in recent years. One of the repeated justifications for direct provision was the need to prevent 'pull factors' for migration across these islands and for Ireland to align with the United Kingdom's arrangements for asylum seekers. There was an acute awareness that the Common Travel Area existed and that Ireland therefore had obligations to the United Kingdom in this context.

We are moving into a scenario after the UK has ceased to be an EU member state, where Ireland is probably going to look to roll back on some of the opt-outs on common justice and security measures that the EU has put in place that Ireland opted out of because of the Common Travel Area.

We need to think again about how the Common Travel Area works today to get it ready for a scenario where it might exist across polities that are completely divided by a sea border. For one of the strongest justifications for maintaining it after reunification will be to make meaningful the ongoing right of people to identify as British, or Irish, or both.

Cross-border constitutionalism is also manifested in the 1998 Agreement's North-South bodies. We find ourselves in an era in which these bodies are not working as a result of the boycott of Northern Ireland's own domestic governance arrangements. But it does not have to be like this. Two decades ago, Stormont collapsed, but, unlike today, in 2002 the UK and Irish Governments, by an exchange of notes, allowed Northern Ireland's government departments to continue to take part in North-South bodies. If we are serious about saying that that was an important part of the 1998 framework, why are we not talking about a similar exchange of notes today in the context of indirect rule as opposed to direct?

**MINORITY
RIGHTS**

Because if some of those foundations are not put in place and maintained, it gets much more difficult to consider the level of alignment between Ireland and Northern Ireland. And in a post reunification environment, moreover, we are going to continue to see a need for exactly those sorts of bodies. We live in a small, damp archipelago in the North Atlantic. Considerations of environmental protection are not going to stop at national borders and we need to reconsider the significance of those North-South and double underline them because they are going to matter in the future.

And perhaps lastly, we are going to have to think about the Windsor Framework, because, at the moment, this most controversial of measures actually does allow for a level of trade movement across these borders that a lot of unionist politicians have said has been essential to their conception of Unionist identity. The boycott of Stormont has not stopped it coming into force. And as the Windsor Framework beds in, companies here are going to increasingly rely on this set of arrangements. The more embedded these arrangements become, the more there is going to be a need for scope for continuing cross-border trade arrangements even after reunification.

I do not want to overemphasise the British-Irish nature of this set of relations. Unionists will not be the only minority group that are affected by reunification, and as a large, geographically contiguous and homogenous group, Unionists will be able to exert considerable weight within a democratic polity like Ireland after reunification.

Constitutional change can have disproportionate effects upon minorities, and particularly those minority groups who do not receive specific attention or protection during these processes.

After a century of partition, Travellers make up a much smaller percentage of the population of Northern Ireland than Ireland, with very little research having been done into this shift. A debate over post-unification governance arrangements must consider what protections are provided in the round, not focus solely on the position of Unionists. When we talk about minority rights, we need to ensure that there is not a 'loudest voice in the room' scenario, marginalising all others.

Protecting Unionists' rights in a united Ireland

Brice Dickson, Emeritus Professor of Law, Queen's University Belfast

The position under international law whenever one state takes territory from another state by consent is that the receiving state must extend to the inhabitants of the territory the protection accorded to the state's existing inhabitants through its international human rights obligations. At the moment, the obligations resting on Ireland and the UK under the numerous multi-national human rights treaties promulgated by the United Nations and the Council of Europe are similar, but they are not identical.

Thus, Ireland has committed itself to observing four complaints systems which the UK has ignored. These are the UN Committees on Civil and Political Rights, on the Elimination of Racism and on the Rights of the Child, together with a Council of Europe Committee on Economic, Social and Cultural rights. Ireland has also ratified the Revised Charter of Social Rights, which the UK has not. Conversely, the UK, unlike Ireland, has signed up to the complaints system of the UN Committee on the Rights of Persons with Disabilities and has ratified the Protocol to the UN's Convention Against Torture and a Protocol to the UN's Convention on the Rights of the Child addressing the sale of children, child prostitution and child pornography.

The UK has also ratified the Council of Europe's Charter for Regional or Minority Languages, but Ireland has not.

So, if Northern Ireland was simply to be absorbed into the Republic of Ireland, without retaining the structures created by the Belfast (Good Friday) Agreement 1998, residents of the northern six counties (and not just unionists) would lose some rights under international treaties but gain others.

In practice, unionists in a united Ireland might be more worried that their rights under domestic Irish law will not be as extensive as they currently are under UK law. To assess whether such worries are justified one needs to weigh up whether the rights conferred under current Irish law by the Constitution of 1937 and the European Convention on Human Rights Act 2003 are greater than those conferred under UK law by the common law and various 'constitutional' statutes such as the Bill of Rights 1689 and the Human Rights Act 1998.

Although there are small differences in how well human rights are protected in the two legal systems at present, the truth is that in most respects they are protected more or less to the same extent. Rights explicitly set out in the 1937 Constitution, including the 'unenumerated' rights occasionally added by the Irish Supreme Court down the years, are comparable to many of the rights recognised by the common law in the UK. Moreover, although some provisions of the Constitution purport to confer rights only on Irish citizens, the courts have tended to accept that non-Irish residents are entitled to them too.

By and large, therefore, any unionist who chooses not to claim the Irish citizenship to which they are entitled under the 'birthright' provision in the 1998 Agreement – assuming they were born in Northern Ireland – would not be disadvantaged in a united Ireland.

Their rights to express themselves, to engage in their preferred religious and cultural practices, and to organise and associate with one another would not be affected. They would be free, if they wanted to, to campaign for a reversal of the reunification, or even for the independence of counties in the north of Ireland which retain a unionist majority (at the moment there are only two – Antrim and Down).

Needless to say, in all of their activities they would remain subject like everyone else to the constraints of the criminal and civil law.

The EU has already indicated that if Northern Ireland were to become part of a reunited Ireland, the whole of the new entity would immediately be recognised as a member state of the EU, just as occurred when East Germany reunited with West Germany in 1990. This would mean that unionists would reacquire the EU rights which they lost when Brexit took effect in 2020. But those rights (for example, of freedom of movement within the EU) are not human rights as such. It is to be sincerely hoped, moreover, that the long-standing special arrangements between Ireland and the UK for the free movement of Irish and British citizens between the two nations would continue to operate after the reunification of Ireland. The Common Travel Area, as it is called, is about a lot more than freedom of movement: it allows the nationals of each country to access housing, health care, education and welfare benefits if they move to the other country.

But there are two contexts in which unionists living in a reunited Ireland might need the law to be changed in order to ensure that they are fully protected against discrimination. They apply only to unionists who refuse to accept the offer of Irish citizenship and insist instead on remaining British.

The first of the contexts is the law on political opinion discrimination. In both Ireland and Great Britain there are no domestic laws which address such discrimination. Instead, they make do with outlawing 'religious or belief' discrimination, in line with a requirement first issued through an EU Directive in 2000. 'Belief' is defined as being akin to a philosophical belief, so it does not cover purely political beliefs (for example, that the Head of State should be an elected President, not a hereditary monarch, or vice versa). Political opinion discrimination is outlawed by the European Convention on Human Rights (ECHR), which is part of the domestic law of both Ireland and the UK, but it can be called in aid only if the complainant can show that the discrimination occurred when they were seeking to exercise one of their other rights in the ECHR. That precludes resort to such a claim if, for example, someone is denied access to a job, goods, services or premises because of their political belief. Throughout these islands, it is only in Northern Ireland's law that political opinion discrimination is currently

expressly prohibited (see, for example, the Fair Employment and Treatment (NI) Order 1998).

The second context is that of electoral law. Today a person who is not an Irish citizen cannot stand for election to either House of the Oireachtas or the Presidency, nor can they vote in elections for the Presidency or in referenda. It is arguable that either Article 1(v) or 1(vi) of the UK-Ireland Treaty accompanying the 1998 Agreement means that whichever government is sovereign in Northern Ireland British citizens born in Northern Ireland must be allowed the same rights as Irish citizens, and vice versa. For the avoidance of doubt, however, it would reassure such British unionists if, in the run-up to the referendum on a reunited Ireland, a guarantee were to be given that explicit amendments will be made to the country's electoral law to reflect the intent of the 1998 Treaty.

The surest way of protecting unionists' rights in a reunited Ireland would be to provide in the new UK-Ireland Treaty accompanying the reunification a clause which more generally guarantees 'no diminution' in the human rights of *any person* then living in Northern Ireland.

Linguistic minorities in a united Ireland: The Irish speaking community

Róisín Nic Liam, PhD candidate in Irish and Celtic Studies, Queen's University Belfast

The following contribution provides a brief synopsis of the context of Irish language rights both in the North and the Republic of Ireland since partition. This is intended as a foundation to inform the reader of what should not and what will not be tolerated by the Irish language community in any future constitutional agreements.

The partition of Ireland marked a defining moment for the fate of the Irish language movement. The previous decades oversaw successful revival efforts led by Conradh na Gaeilge nationally, with the west Belfast branch alone boasting more than 500 members within the initial years of its inception (Mac Póilín in De Brún, 2006: 120). The creation of the northern state and subsequent Unionist political hegemony, however, was to subvert the concerted national revival efforts and uniquely shape the trajectory of the language in the North. It transformed the language movement from one which transcended sectarianism (Hughes in De Brún, 2006), to one considered 'an anti-British counter-culture' which promoted disloyalty to the Union (Andrews 1997 in Mac Ionrachaigh, 2021: 377). This provided the rationale for political Unionism to pursue "a policy of systematic neglect and legislative discrimination" against the Irish language community in

the years that followed (Mac Ionrachaigh, 2013: 80), manifesting primarily – though not exclusively - in the removal of Irish language funding, the banning of Irish street signs until 1995 (O'Reilly 1999: 139), and the state's refusal to provide official recognition to Irish-medium schools for up to 13 years in cases such as Bunscoil Phobal Feirste, the North's first Irish-medium school (Nig Uidhir in De Brún, 2006: 140).

Such contempt provided the Irish language community with the impetus to assume the task of grassroots revival, leading Belfast today to boast one of the highest percentages of daily Irish speakers in all of Ireland (Northern Ireland Statistics and Research Agency, 2023). The North of Ireland also has over 7000 pupils in Irish-medium education, making it the fastest growing education sector in the state (McVeigh, 2022: 21). Unfortunately, however, that demand is not reflected in state support.

Over 60% of the sector is still in unsuitable or temporary accommodation (Comhairle na Gaelscolaíochta, 2021), and critical developmental assistance continues to be blocked or frustrated on an ongoing basis. Dr. Robbie McVeigh (2022) has also outlined how – despite some significantly positive changes – the state’s statutory duty to the development of Irish-medium education has not been entirely fulfilled since its introduction in 1998.

Indeed, despite the new era of equality promised more generally to the Irish language community under the Belfast (Good Friday) Agreement 1998, we continue to encounter outright disregard and hostility from official quarters. Successive agreements, including the

St Andrews Agreement of 2006 promised an Irish Language Act, but this has still not been delivered.

At the time of writing, we still await the appointment of a language commissioner too, or any practical effect of the Identity and Language Act introduced in 2022, the flaws of which are beyond the scope of this report.

The sociolinguistic conditions in the southern state do not inspire much confidence either. Despite the enshrining of the Irish language into the constitution

of 1922 and further consolidations in that of 1937, Senior Judge Úna Ní Raifeartaigh of the Irish High Court has claimed that the constitutional status of the Irish language appears to “[float] at an abstract level” (Tuairisc, 2019). Indeed one would be wise to question the utility of the protections offered in the constitution and the Official Languages Act of 2003 and 2021 when considering Ní Raifeartaigh claims that the Irish-speaking community “sometimes faces surprising intolerance towards its rights from quarters usually more respectful of minority rights” (Tuairisc, 2019). Other significant contributions from Ní Raifeartaigh include her concerns of the quality and provision of Irish translation services in Irish court systems (Tuairisc, 2020).

This all echoes Conradh na Gaeilge’s concern – as articulated in 2021 – that there exists a “significant difference” between official state rhetoric and de facto state policy towards an Ghaeilge.

Indeed the first language commissioner in the South, Seán Ó Cuirreáin, stood down from his role in 2014 in protest against government inaction on the language (Ó Caollaí, 2013).

Ongoing debates and potential future constitutional arrangements therefore provide an exciting and timely opportunity for the Irish language community to organize and agitate for more meaningful and impactful rights. Conradh na Gaeilge will lead this conversation by creating a working group whose remit will be to prepare a report on the recommended constitutional status of an Ghaeilge in the case of a united Ireland. This report will examine the current legal standing of the Irish language - both in the North and the South - and will provide a comparative analysis between Ireland and other bilingual countries as a means of emanating best practices elsewhere. Conradh na Gaeilge hopes that this will facilitate the Irish language community to participate in the ongoing and vibrant conversations regarding Irish Unity in an organised manner. It hopes too that the report will provide a blueprint for the protection and further development of the language and Gaeltacht communities in future constitutional agreements.

The sustainability and appropriateness of any arrangements resembling the Stormont Executive also needs to be examined in future civic debates. The Irish language community - like many other sectors of society - has been victim too often to its precarity. A united Ireland would - in the most ideal scenario - provide us with a stable and local governance impervious

to ideological vetoes and institutional impediments.

The above summary gave a brief insight to the failure of both states to protect and develop Ireland's indigenous language since partition. We must learn from these mistakes, ensure they do not happen again, and equally, learn from successes over the years. We must consider the constitution, education, the Gaeltacht, language promotion and protection, the effective implementation of legislation, along with socio-linguistic issues impacting communities across Ireland. To do so, we must encourage broad, inclusive, and comprehensive debate and provide spaces for language communities to participate in a conversation that will undoubtedly have an impact on us all. To recognize our own unique history of colonisation in a wider global context, alongside the effective implementation of agreements, would begin to address the root causes of the conflict and thus function as the most effective means to build a shared and agreed Ireland. Equality must be the watchword of the day.

This report is an amalgamation of material provided by Conradh na Gaeilge and the author's own observations, therefore not everything in the text should be interpreted as Conradh na Gaeilge's official policy or stance.

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Panel 2: Women's Rights

Chair: Patricia McKeown, UNISON



Seminar presenter: Patricia McKeown

My name is Patricia McKeown. I am the regional secretary of the trade union UNISON.

And I have the pleasure of being the co-convenor of the Equality Coalition, along with my colleague Daniel Holder from CAJ. Also I have the pleasure of introducing to this afternoon some astonishing women. I'm a feminist. I'm delighted to be taking part in this kind of discussion, a discussion which is going to run for some time about what the future of our island might look like.

As a feminist, as far as I am concerned, whatever that future looks like, if women's rights do not have primacy, then it's not the right settlement for me. And I think many, many women feel that way.

Protecting women's rights in a united Ireland

Fionnuala Ní Aoláin, Regents Professor, Law School, University of Minnesota and Professor of Law, Queen's University Belfast

It has been 25 years since the adoption of the Belfast (Good Friday) Agreement in 1998, which heralded a transition to the decades long conflict in Northern Ireland. The first pivotal article of the Agreement undoes traditional notions of the inviolability of sovereignty and territoriality and holds out the prospect of a referendum on a fundamental change of political status at some unspecified future date, as follows:

“It is for the people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland.” (The Belfast Agreement, 1998)

Now a quarter of a century on from the 1998 Agreement and in the post-Brexit context, there is a lively debate about Irish reunification, a portion of which is aimed directly at progressing the practicalities of a political referendum. Part of these ongoing ‘constitutional conversations’ is about breaking down the question of unification into its repercussions for a range of issues,

and for the purposes of our discussion here I want to focus my remarks on women's rights.

It is worth reflecting on the ‘gender’ of that pivotal first article of the 1998 Agreement, and note that in general the history of self-determination has not served women well.

More particularly, across multiple post-colonial and transitional contexts, the term self-determination has functioned theoretically neutrally but in practice has operated in a highly patriarchal way to advance notions of self-determination that prize territory above people (and in particular the female bodies that inhabit such territories). These notions have required women to subsume their agendas for equality and gender transformation to the abstract goal of a certain kind of insular territoriality and sovereignty whose perceived symbolic value trumps other values, and more often than not the hierarchical determinism of self-determination operates to eclipse and occlude other rights.

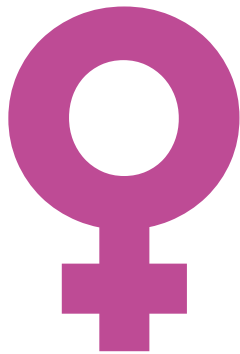
It is also worth paying attention to the language of **'people'** in the classical claims about self-determination. People is often again coded neutral, but people has a coded, distinct and historically embedded meaning – specifically **men who agree the terms and basis on which processes towards unification are settled**. The importance of noting how the political process including political parties who decide upon the question (i.e. will a referendum be facilitated) are predominantly male, and I do not need to recount for this audience the demise of the Women's Coalition, the enormous barriers facing women entering and staying in political life in Northern Ireland, and the

'nested institutionalism' of masculinities in political culture – north, south and east of the border.

As we reflect on 'preparing' for unification I think feminists must come to this stated project with some scepticism based on these demonstrated challenges:

- The collusion of male elites from all political sides on women's autonomy and reproductive rights.
 - The embeddedness of sexual violence and the acceptance of misogyny in public life – best illustrated by the Rugby rape trial in which the most elemental things we teach our students in criminal law, about how women's narratives about sexual harm will be drowned out by a legal process which eviscerates the female voice and female experience to the dominance of the man's perspective of what is acceptable to presume about a woman's consent to violence and harm come true – and then we wonder why women will not report the sexual harm they experience?
 - In civic space, the continued challenges for women-led civil society in Northern Ireland and the Republic of Ireland to be funded adequately, supported to engaged in right-based action.
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My point is a generic but I think quite powerful one, that the 'agreement and consent' of the majority functions in a universe of inequality, of structural and systemic lack of representation for women (all the more so for LGBTQ and gender diverse persons, women of colour, traveller women, Irish language speaking women) and so I think if we are imagining what gender equality might look like in a united Ireland we have to take a fundamental step back and ask what are the a priori conditions that create a process, that could lead to a mainstreaming and centralising of gender and women's rights in the pursuit of unification.



To that end I want to highlight that we have few good precedents to learn from:

- Transitions have not been (generally) good for or kind to women
- Conflict transformation as evidenced by the abject failure in many dimensions of the Women, Peace and Security Agenda has not delivered –
 - If the 'bargain' of WPS for women in armed conflict was protection from violence, it has abjectly failed whether in Gaza, Afghanistan, Yemen, or Syria
 - Whether in peace processes, think of the Doha process and Afghan women waiting on the side-lines of negotiations sending the strongest of messages that they could be marginalised and ignored, and look where we landed now with that which the UN Working Group on Discrimination Against Women has termed "gender apartheid"
 - And in consociationalism agreements from Bosnia to Belfast, where women frankly have not done so well, as ethnic elites and ethnic entrepreneurs have colonised the political space to advance their own nationalistic ends.

So I would say, that to imagine a process of unification that serves women well we need amplification of women's inclusion in the very foundational process of deciding:

- What unification actually means?
- What compromises will be required for this fundamental territorial and sovereign shift?
- What is the equality discussion in this framework, regarding women as both a category in their own right but as an intersectional category that encompasses minority religious and political status?
- How do we address the fundamental needs and rights of all persons equally on this Island?
- How do we move from territoriality to personhood as the defining positionality in moving into imagined space?
- Where are the women in this conversation? How are they included?
- Where are the most marginal women in this conversation?
- How could we make this an entirely different conversation from the one both academic and political elites seem intent on pursuing?

My profound concern right now is that the only template we have for this discussion of unification, one that is largely based on nationalistic (read masculine) tropes of territorial unification between one State (Ireland) that has historically discriminated and defined women out of public life and another entity (Northern Ireland) that has discriminated and defined women out of public life. This is not the template a feminist, equality and human rights-based discussion would start with – we would start somewhere else. Maybe with a different set of questions:

- How do we co-exist on this island?

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More than a democratic right: Women's participation in constitutional change

Fidelma Ashe, Professor of Politics, Transitional Justice Institute, Ulster University

Historically, constitutions have been 'man-made'. Rowley (1989) noted that in the Irish context, no woman was involved in drafting the 1937 constitution. More recently, the patriarchal structuring of constitutions has been subject to scrutiny by feminists, and the women's movement more broadly. Their critique, lobbying and campaigning has led to a greater recognition of the need to create more gender sensitive constitutions and/or to remove constitutional provisions that reinforce historical gender inequalities.

As constitutions set out the values of the nation, embedding gender equality provisions in constitutions expresses the state's commitment to protecting the rights and equality of women. Various provisions can be inserted into new constitutions to protect women's rights, and constitutional amendments can correct historical inequities. Suteu and Draji (2015) designed a toolbox that drafters can utilise to create gender sensitive constitutions that include recommendations such as: 'Clearly state women's rights to exercise the freedoms they have traditionally been denied, such as their sexual and reproductive rights, the right to hold political and judicial positions, labor-related rights, rights of inheritance.' However, the inclusion of gender sensitive provisions by drafters,

which is usually accompanied by increases in the number of women in formal politics and decision-making roles, is the final stage in constitutional reform or transition. In the rest of this paper, I argue that wider and deeper participation by women in constitutional debates and design is not only a democratic right, but can also render the societal norms that have underpinned 'man-made' constitutions problematic.

What has been termed the 'participatory turn' in constitutionalism, which emphasises the need for increased citizen involvement in constitutional transformations, has far-reaching consequences for women, including women in societies emerging from conflict.

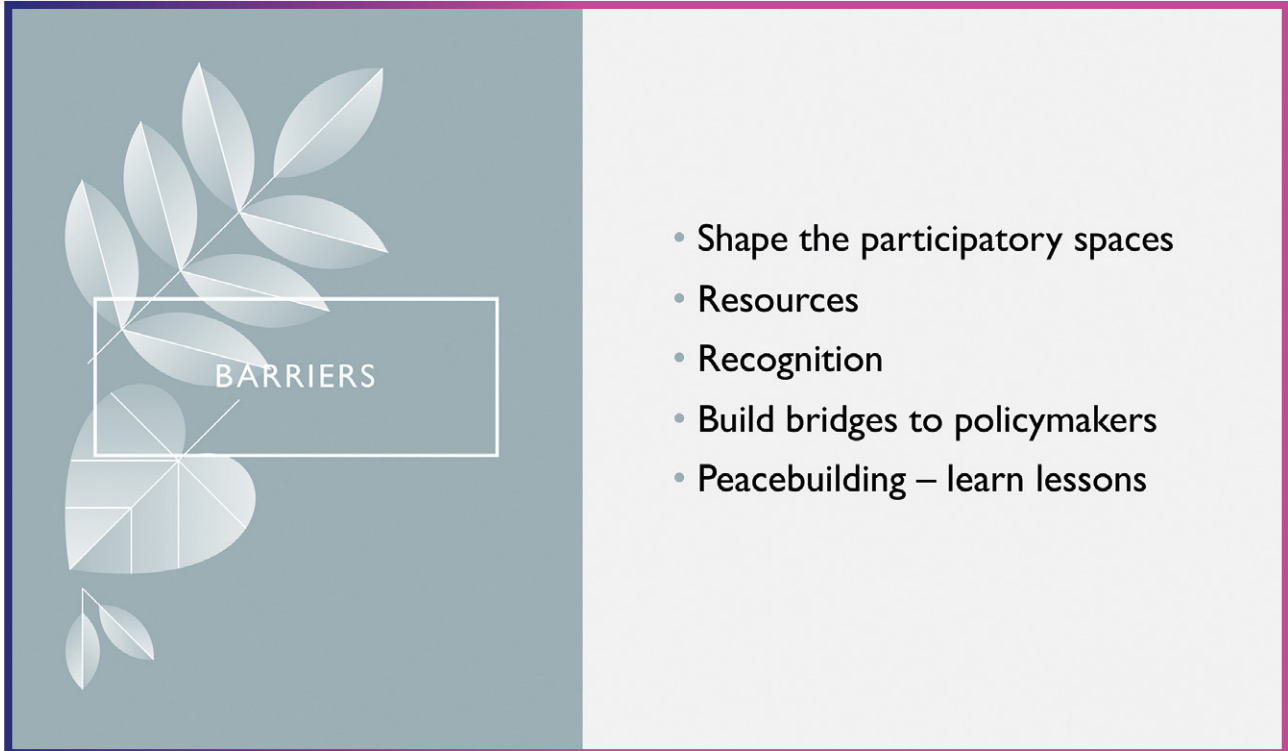
As per international law, there is a responsibility on states to ensure that women are able to participate in peacebuilding initiatives, which encompass constitutional changes in post-conflict societies (UN Resolution 1325). Participation needs to be deep and wide to benefit women.

There are international examples of wide citizen participation leading to positive outcomes for women in constitutional reform, including South Africa, Tunisia and Uganda. Uganda's process of civic education through the Ugandan Constitutional Commission reached extensive numbers of people. 30,000 community leaders engaged in seminars, 870 sub counties seminars that explained the process of reform and solicited views through memoranda. During the eight years during which the Ugandan constitution (1995) was developed, 'some of the most active civil society groups were women' and they made constitutional gains.

Wide and deep participation by women in constitutional change can open a critical discursive space that can drive progressive change. As Holmes (2012) notes, more radical expressions of democratic constitutionalism in the past tried to prevent 'the elevation of the few on the backs of the many'. It is this radical and anti-hegemonic element of participation that contests the status quo. Through civic education initiatives and dialogue women can dispute existing gender inequities and develop counter-hegemonic narratives. Women can challenge the traditional hierarchy of identities and priorities, and expose existing gender power relationships. Therefore, women challenge the society's gender value systems that are reflected in constitutions.

My research over the last 4 years has attempted to support the inclusion of women in constitutional debate and discussion in the Irish context (Ashe, 2002; Ashe, Rooney and McMinn, 2022). The learning from this research includes:

- An invite to participate is insufficient to include marginalised identities such as women in constitutional debate. Researchers and advocates for participation need to reach out to communities and work with them across a range of barriers to inclusion.
 - Grassroots women do not interact through formal modes of engagement built around notions of objectivity and rational decision-making - notions underpinned by class dynamics and a host of other factors - models of participation must be cognizant of these factors.
 - Women expand the agenda of constitutional change beyond the ethno-nationalist binary by focusing on socio-economic issues.
 - Women need spaces to develop perspectives prior to engaging in broader constitutional debates.
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- Women cannot remain marginalised stakeholders in Ireland's future and the traditional barriers to participation in political change in deeply divided societies – fear, resources, access – need to be addressed.

Concluding remarks

Regardless of the outcomes of a border poll, constitutional debates can create spaces for women to raise issues about gender inequality. However, the structures surrounding the process of constitutional change can impede or support women's participation and ability to have their voices and perspectives heard.

There are numerous international case studies of how women's participation in constitutional change has been facilitated to build on and develop in the Irish context. Addressing gender issues must be given much more attention and needs to be prioritised not simply as a means to ensure women's democratic right to participate in constitutional change, but to open space for progressive forms of politics that can form counter-hegemonic narratives that challenge the gender status quo.

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How could women's rights be protected in a united Ireland?

Joanna McMinn, Research Associate, School of Law, Ulster University

The island of Ireland is a post conflict society. UN Security Council Resolution 1325 and subsequent resolutions have played a significant role in raising the awareness of armed conflict impacts on women and emphasising the importance of women's participation in conflict prevention, peace negotiations, and post-conflict reconstruction. UNSCR1325 was a result of feminist activism through the concerted efforts of various women's organizations and feminists working at local, governmental and UN level who advocated for the recognition of women's rights in conflict zones.

From a critical feminist perspective, however, the effectiveness of UNSCR1325 in practice remains limited due to various challenges and shortcomings including gaps in implementation, tokenism, and the ongoing marginalisation of women's voices. 1325 fails to consider the intersectionality of women's experiences, limited resources and funding required for full implementation. Addressing these issues requires a more comprehensive and intersectional approach that goes beyond the mere adoption of resolutions and focuses on genuine empowerment, participation, and protection of women in post-conflict environments.

In Northern Ireland, women have engaged in the peace process at grassroots level, as well as in political parties and uniquely in the Women's Coalition.

In the 1980s, there was an upsurge of locally based women's groups, who without calling themselves feminist or developing an agreed feminist or political agenda, set about organising activities for women to combat isolation, poverty, and social exclusion (Taillon,1992; Rooney, 1995; Coulter, 1993; Connolly, 1997). This is the phenomenon that has become known as the women's community sector.



WOMEN'S
COMMUNITY
SECTOR

At the end of the 1990s, there was well over 1,000 community individual women's groups in the South alone, and an estimated 450 groups in the North; the majority engaged in community education, while others had a political and human rights focus. Most of those engaged in community education were or are small groups struggling for survival and depending on voluntary commitment and small grants to pay for courses. Theirs is a mostly hidden history.

However, some left a record.

1994 Clár na mBan (Women's Agenda)

Clár na mBan was a republican feminist group that formed in 1993. They sought to bring republican women together to discuss what a new Northern Irish society might look like. Clár na mBan was committed to ensuring that the voices of working-class women were heard and made a difference when it came to shaping the future beyond violent conflict.

At the group's first Belfast conference in March 1994 entitled 'Clár na mBan: Women's Agenda for Peace', the agenda put forward at the conference called

for a 'demilitarised society, economic equality, rights for children, and an end to discrimination against disabled people and lesbians' (Clár na mBan 1994: 15). These proposals were submitted to the Forum for Peace and Reconciliation. In this way Clár na mBan, a small feminist group of activists, helped to shape the equality measures introduced in the Belfast (Good Friday) Agreement 1998 (Rooney, 2000).

1998 The Women's Coalition



The story of the Women's Coalition is better known. The Coalition relied on the support of numerous local women's groups in Belfast and across the north to get a 'woman's voice' elected to the talks. Women's groups felt empowered by the Coalition's success, which provided a platform for women to advocate for their rights and to influence policy and legislation, but the party lost its seats in the Northern Ireland Assembly after the 2003 elections.

While the 1998 Agreement marked a significant step toward peace and stability in Northern Ireland, the commitments to equality and rights in the Agreement did not have strong implementation mechanisms in the legislation that followed. We continue, 25 years later, with no Bill of Rights. The most marginalised women's circumstances are unchanged. There has been some progress, and some women have become prominent in political parties – but there has been no cross-party commitment to women's equality. Women's groups have faced ongoing challenges in advocating for their rights and addressing issues such as domestic violence, poverty, and community development; and this has included working on cross-border projects.

Women's Rights Across the island of Ireland: Cross-Border Women's Activism

The POWER Partnership (Politically Organised Women Educating for Representation) a cross-border partnership between the Women's Support Network and Ulster University in the north, and the National Women's Council and WERRC/UCD in the south that ran between 1997/1999, supporting women to become more active in the public sphere of politics.



Hanna's House (1999-2013), an all-island feminist network inspired by Hanna Sheehy Skeffington, aimed to support dialogue between women and policy makers and politicians that would strengthen the capacity of women to have their interests reflected in future policy developments. HH organised seminars and conferences across the island, discussing the legacy of the conflict: a feminist analysis of peace building; women's right to security in the home, locally and globally, what a feminist model of a truth recovery processes would look like, and a major conference on UNSCR 1325, Delivering Women Peace and Security in 2013.

Conclusion

For many years now, cross-border women's activism has been instrumental in promoting women's rights by fostering dialogue, taking an intersectional approach to inequalities, advocating for inclusivity, and addressing gender-specific issues; lobbying government and engaging with international human rights mechanisms.

In the south, the Minister for Justice, Helen McAtee, has introduced a Zero Tolerance Strategy. This is a reflection of political will to protect women's rights, and a window of opportunity, but also it is a reflection, as in the north, of feminist activism and the successful advocacy of the Irish Observatory on Violence Against Women, established in 2022, an independent network of grassroots and national organisations that come together quarterly to monitor progress on violence against women in Ireland, linked to the European Lobby. Both the Observatory and the Women's Lobby in the north are responding to the Council of Europe's Report on the Istanbul Convention.

All Island Women's Forum: coordinated by the National Women's Council (NWC), the all-island women's forum brings together women from both sides of the border, from marginalised communities, and spanning generations. As well as centring women's voices in peacebuilding, The Forum has made recommendations to both governments, including developing an all-island strategy on gender-based violence, introducing gender quotas for local politics, and a North-South media partnership which would increase women's voices on all-island issues. Currently, two cross-border initiatives are to address women's right for freedom from violence, and freedom from poverty.

The all-island forum, like all projects in the community women's sector is supported by short term funding, despite there being a strong case for building relationships and supporting solidarity between women's organisations north and south. All experience leads to the conclusion that the protection of women's rights in a united Ireland is going to involve the same challenges as exist at the present time, on this island and across the world.

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What do we mean by 'women's rights' and how do we guarantee them?

Elaine Crory, Women's Resource and Development Agency

Women's rights, in the public imagination and in much of the public conversation, is often framed around particular issues. These issues are very often then framed as 'solvable', as problems that can be fixed by changing a piece of legislation; hence the fight for the right to vote, for equal pay, for abortion rights, and so on. The reality is simultaneously more complex and more simple. We know, for example, that changing the law around equal pay did not lead to an end to the massive gender pay gap – something that persists over half a century after the law changed in the UK.

Those of us in the women's movement can see plainly that dealing with issues in this way without a wider conversation about the factors that lead to economic inequality between men and women; unequal caring responsibilities, the devaluing of so-called 'women's work', the motherhood penalty, simply does not work; yes, the law needed to change, but no, that was not sufficient.

Part of the barrier faced by the women's movement is the way that rights, as a concept, is understood and spoken about. Partially because of the ways that history has played out, we tend to think of rights as civil and political, without fully considering economic, social and cultural rights. This means that making economic arguments and focusing on rights does not resonate with people in the same way, for all the cries that 'women's rights are human rights', prevalent in the movement, those words mean nothing to many. To further complicate the issue, women are not only women, and rights are intersectional.

With all this taken into consideration, the barriers to the realisation of rights are clear – what this means for the future of this island is less obvious.

The history of both jurisdictions on this island with regards to the realisation of women's rights is filled with dark episodes, many of which have still not been subject to the disinfectant of sunlight.

We also have a cultural habit – not unique to these shores – that tends towards a degree of navel-gazing on the one hand and finger-pointing on the other; elements of the movement in both jurisdictions, particularly at critical times, can tend towards insularity, to pulling up the ladder and writing each other off. This has an obvious impact on cross-border solidarity which has waxed and waned depending on the fight at hand. This in turn can be both a symptom of and can result in a failure of optimism and of imagination; a failure to properly articulate what we are fighting for. These problems have been overcome, at times, and can be again, but they are very real.

Rights, once won on paper, are not guaranteed, either, and the ground has to be continuously defended, rearticulated and built upon. Every piece of progress, in one jurisdiction or both, has often been followed by another fight to have that progress fully realised, let alone to improve upon an often-narrow victory – again, see the Equal Pay Act – and much of this is contingent on the state and the public mood. Neither jurisdiction has covered itself in glory in this regard and neither the prospect of a united Ireland, of a strengthened Union, or of the status quo seems to offer an obvious answer to the problem.

The UK, at present, has a government that is hostile towards the very idea of human rights, and is seeking to row back on very fundamental rights – progress at a time like this seems like a pipedream. Ireland is making progress in some regards, certainly as compared to the UK, but nothing is forever; within living memory the very opposite was true. In an atmosphere of ‘culture wars’, very conservative movements are appropriating the language of rights, wielding imagined conceptions of ‘women’s rights’ as a cudgel against all and sundry and particularly against the rights of transgender people, migrants, and asylum seekers. Given an opportunity to opt out this stifling atmosphere, it can be tempting to feel like a choice between the two is a ‘no-brainer’, and that those concerned with women’s rights should make good their escape, like an action hero sliding under a closing door in the nick of time.

Nothing is guaranteed, however. Governments and populations can turn on a dime. Meanwhile, at present there are real opportunities that should not be squandered. At the very least, we need to consider rights to be the most building block of the future, whatever that future may be. This should include a conception of rights understood in the broadest sense and considering intersectionality; it must mean their full realisation, rather than cold words on paper.

It must be an unnegotiable part of any framework for a new constitutional arrangement. It must insulate against future 'shocks', such as a hostile government or a significant shift in the public mood. There must be robust mechanisms in place to hold to account institutions that fail in their duties to recognise and protect those rights. No person should ever have to knock on doors and plead with their fellow citizens to have their rights realised.

To achieve this, and indeed whatever constitutional arrangement is in our future, we must return to the public conversation around rights, and we must return to solidarity.

To get this right, we must have widespread understanding about what we mean when we talk about rights in general, and about women's rights in particular.

We must have buy-in to match that understanding. And come a new constitutional arrangement or the status quo, we must not be content to let rights be diminished, demonised and decimated in the UK.

**WOMEN'S
+ RIGHTS**

Biographies of the speakers

Rory O'Connell joined the Transitional Justice Institute (TJI) and School of Law in 2013 as Professor of Human Rights and Constitutional Law. He is the Director of Development & Partnerships – School of Law. He held the role of TJI Director from February 2014 to February 2020, and Research Director for Law from July 2017 to September 2023. Rory's research and teaching interests are in the areas of Human Rights and Equality, Constitutional Law and Legal Theory. His latest book *Law, Democracy and the European Court of Human Rights* (Cambridge 2020) examines the role of democracy in the jurisprudence of the European Court of Human Rights.

Daniel Holder is the Director of the Committee on the Administration of Justice, and co-convenor of the Equality Coalition. Prior to this he worked in the policy team of the Northern Ireland Human Rights Commission for five years. Before that he led a migrant worker equality project run by the NGO the South Tyrone Empowerment Programme and Dungannon Council. He previously worked in Havana, Cuba as a language professional for the University of Havana, press agency Prensa Latina and national broadcaster, ICRT. He has a primary degree in Spanish and Sociology and an LLM in Human Rights Law, both from Queens University.

Colin Harvey is Professor of Human Rights Law in the School of Law, Queen's University Belfast, Director of the Human Rights Centre, a Fellow of the Senator George J Mitchell Institute for Global Peace, Security and Justice and an Associate Fellow of the Institute of Irish Studies. Professor Harvey is a Commissioner on the Irish Human Rights and Equality Commission and a member of the Scientific Committee of the EU Agency for Fundamental Rights.

Colin Murray has taught Constitutional Law and Counter-Terrorism Law at Newcastle Law School for seventeen years. His research spans these subjects, encompassing prisoner disenfranchisement and the right to vote, imperialism's impact on the UK Constitution and the human rights implications of special counter-terrorism powers. His ongoing research explores the implications of Brexit for Northern Ireland and culminated in him running a major Economic and Social Research Council project on governance and identity in Northern Ireland amid the negotiation of the EU-UK Withdrawal Agreement and Trade and Cooperation Agreement (<https://performingidentities.org/>). In the course of this research he has appeared before multiple parliamentary committees and advised the UK and Irish Governments.

Brice Dickson is Emeritus Professor of International and Comparative Law at Queen's University Belfast and was Chief Commissioner of the Northern Ireland Human Rights Commission from 1999 to 2005. His latest book is *International Human Rights Monitoring Mechanisms: A Study of their Impact in the UK* (Elgar Publishing, 2022).

Róisín Nic Liam has recently moved to Belfast from Cork to pursue a doctorate in Queen's University. Her research concerns the community-based revival of the Irish language in Belfast since the Good Friday Agreement in 1998. Before resuming her studies, Róisín worked as a Teaching Assistant and lecturer in Irish in various universities across Munster. She is involved in various forms of activism and will form part of Conradh na Gaeilge's new committee who are tasked with preparing a report on the recommended constitutional status of an Ghaeilge in a United Ireland.

Patricia McKeown is Regional Secretary of UNISON, the Public Service Union, and one of the most senior trade unionists in Ireland. She is Co-Convenor of the Equality Coalition. She was President of the Irish Congress of Trade Unions from 2007 to 2009 and was also Chairperson of its Northern Committee (from 2005 to 2007). She is a former Deputy Chairperson of the EOCNI. Patricia is a worker representative for Ireland on the EU European Economic and Social Committee.

Fionnuala Ní Aoláin is concurrently Regents Professor and Robina Professor of Law, Public Policy and Society at the University of Minnesota Law School and Professor of Law at the Queens University, Belfast, Northern Ireland. She has previously taught or held visiting positions at Harvard Law School, Columbia Law School, Princeton University, and the Hebrew University of Jerusalem. Professor Ní Aoláin is the recipient of numerous academic awards and honours including the Leverhulme Fellowship, British Academy Awards, Fulbright scholarship, the Alon Prize, the Robert Schumann Scholarship, a European Commission award, and the Lawlor fellowship. She is an elected fellow of the Royal Irish Academy. She has published extensively in the fields of emergency powers, counter-terrorism and human rights, conflict regulation, transitional justice and sex based violence in times of war. Professor Ní Aoláin is currently the United Nations Special Rapporteur on the Protection and Promotion of Human Rights while Countering Terrorism (2017-), and was re-elected for a second term in August 2020.

Fidelma Ashe is a Professor of politics and a member of the Transitional Justice Institute. She is author/editor of 5 books including 2 single authored monographs. She has written widely in the area of gender and peacebuilding. Her research has been disseminated through a series of invited papers in international centres of excellence and keynotes at international conferences as far afield as the Chinese University of Hong Kong. She has given oral testimony to the Oireachtas on constitutional change and the GFA. She continues to raise issues of women's equality in public discussions of Irish Unity.

Joanna McMinn has 40 years' experience of working in and with women's organisations. Her background is in feminist adult education and community development with working class and marginalised women's groups. Joanna was the first Development Worker, later Director of the Women's Resource and Development Agency in Belfast from its beginning in 1983 as the Women's Education Project until 1994. From 1986 to 1993, Joanna also taught Women's Studies as an Open University tutor, and worked as a part-time tutor with the Transitional Justice Institute in Ulster University. After leaving the WRDA, Joanna undertook a PhD which focused on community-based women's education and the promotion of social justice for women. From 2001 to 2009, Joanna was Director of

the National Women's Council and over the years has been involved in several all-island feminist initiatives and networks, including the current All Island Women's Forum.

Elaine Croy is Women's Sector Lobbyist at Women's Resource and Development Agency and Specialist Advisor to Westminster Women & Equalities Committee Inquiry on Violence Against Women and Girls. She has a background in adult education and holds a MA in Politics and International Relations and a BA in Politics and History.

