

The Belfast Good Friday Agreement and transformative change: promise, power and solidarity

Rory O’Connell (Ulster), Fionnuala Ní Aoláin (QUB and Minnesota), Lina Malagón (University of Wales Trinity St David).¹

This year the Belfast/Good Friday peace agreement marks its 25th anniversary. For many observers the Agreement and peace in Northern Ireland projects a global image of a successfully concluded end to conflict and the world’s attention has moved on from the intricacies of the ‘troubles’. Anniversaries of the Agreement prompt congregations of the great and the good in self-congratulatory mode, and Northern Irish politicians and others proselytise the success of the Agreement abroad, though domestic evangelism is generally avoided by a more sanguine local audience.

The Belfast/Good Friday peace agreement is a remarkable triumph in many respects. It is a reasonably complex document, including two agreements - one tripartite, the agreement reached in multiparty talks in Belfast and the other an international treaty between two sovereign states (UK and Ireland).² It is structured into three strands which address the internal democratic arrangements in Northern Ireland (Strand One), North-South relations (Strand Two), and East-West relations (ie relations between the British and Irish islands, Strand Three). It includes significant and wide-ranging guarantees addressing human rights, equality of opportunity and rule of law safeguards. The Agreement, or at least much of it, has been implemented in the UK by the Northern Ireland Act 1998.

The Agreement constitutes part of a wider and ongoing peace process, and as such illuminates the broader point that peace agreements are both constitutive of process, and only a part of the process of peace-making. In 1998 the peace deal was accompanied by other major reforms most notably the reform of policing and justice, and changes to the law on fair employment dealing with religious and political discrimination. Regular crises in the wider peace process have produced periods – sometimes lengthy periods—in which the political institutions established by the Agreement have not meaningfully functioned. This has resulted in negotiation on further and supplementary peace agreements that supplement the Agreement’s arrangements, including for example the St. Andrews Agreement (2006) the Hillsborough Agreement (2010), the Stormont House Agreement (2014) and the New Decade, New Approach Agreement (2020).

There is much to celebrate about this peace process, most notably the ending of large-scale organised political violence and repression in the name of counter-terrorism. However there are important reasons for caution

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² Colm Campbell, Fionnuala Ní Aoláin and Colin Harvey, 'The Frontiers of Legal Analysis: Reframing the Transition in Northern Ireland' (2003) 66 *Modern Law Review* 317.

amidst celebrations. Human rights groups warn of an undulating 'rollback' on the Agreement,³ political violence remains a lived reality in Northern Ireland, key elements of the peace agreement remain under-enforced or simply undelivered and Brexit and the Protocol have enhanced internal political disagreements producing a situation whereby Northern Ireland has no functioning Executive or Assembly. A key concern are the serious concerns about levels of deprivation and economic disadvantage in Northern Ireland given that these factors were conducive to the trigger for collective violence from 1969 onwards.

These realities of 'stop-start' transition on the ground, as well as the barriers to implementing a peace agreement in practice dovetail with scholarly analysis calling for deeper transformative change in transitional processes and peace agreements. A focus on transformative transition have led to sustained calls on the ground and in the literature to tackle 'structural inequalities, poverty, and social exclusion.'⁴ Such demands have led to the emergence of transformative justice frameworks and discourse as an alternative to transitional justice. The shift in language from 'transition' to 'transformation' raises multiple questions about the deeper meaning and substance of this shift, an issue explored in this paper.

In parallel, the ongoing challenges of implementation in peace-making contexts (including but not limited to Northern Ireland) suggest that we need to consider the challenges that recent writings on transformative justice and analogous discourses have identified: while undoubtedly there have been important reforms; how transformative has the Agreement and associated reforms in terms of addressing the root causes of the conflict and the structures that underpinned it? To address that question, this paper analyses the key legal and political texts associated with the Good Friday/Belfast peace agreement and relies on semi-structured interviews with 20 leaders in Northern Irish civil society to better understand the Agreement's promise of transformation, and how and why it has not been delivered. The interviews provide a unique database of knowledge gleaned from key interlocutors in the conflict and its aftermath to assess the 'health' of the peace agreement, its ongoing challenges, and the possibility for re-vitalization.

In reflecting on the Agreement and the changes it promises, we use Sandoval's typology of different forms of societal change: 'ordinary', 'structural' and 'fundamental', to guide our thinking and analysis. '*Ordinary social change* refers to everyday changes that align with dominant ideologies and structures in society'.⁵ Structural change involves significant changes to dominant structures but without touching ideologies. Fundamental social change seeks to address both structures and ideologies and 'occurs when various structural changes provide foundations for new dominant ideologies inspired by radically different values to those evident during the

³ *Committee on the Administration of Justice, Report of the Mapping the Rollback conference* <https://caj.org.uk/wp-content/uploads/2017/03/No.-65-Mapping-the-Rollback-HR-Provisions-15-years-on-Conference-Report-Nov-2013.pdf>. This was a report on the 15th anniversary of the Agreement. Prof O'Connell and Prof Ní Aoláin are on the executive of CAJ.

⁴ Clara Sandoval-Villalba, 'Reflections on the Transformative Potential of Transitional Justice and the Nature of Social Change in Times of Transition' in Roger Duthie and Paul Seils (ed.) *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies* (International Center for Transitional Justice 2017).

⁵ Clara Sandoval-Villalba, 'Reflections on the Transformative Potential of Transitional Justice and the Nature of Social Change in Times of Transition' (2017).

repression or conflict to flourish'.⁶ We find these useful frames to apply to an ongoing peace process whose promise is still unfolding.

The Promise

The peace agreement contains much that is potentially genuinely transformative. At its heart, the introduction of power-sharing (consociational) political institutions in Strand One is a major change from the majoritarian winner-takes-it-all model of political democracy which marked Northern Ireland from 1921-1972, (and which is still the model for central democracy in the UK). The recognition of the right of the people of Northern Ireland to determine whether to remain in the UK or to unite with Ireland, and the creation of transnational cross-border institutions, both North-South and East-West, demonstrates constitutional imagination.⁷ The reform of policing and justice – especially policing – has resulted in a police service subject to an independent Policing Board and an independent Ombudsman. Policing reform involved a temporary quota to enhance Catholic police recruitment. Some of these changes are genuinely structural in Sandoval's terms, and may even hint at more fundamental change in so far as they suggest a move away from a majoritarian approach to democracy and away from assumptions about dominant political identity in the territory.

Other aspects of the peace agreement suggest a commitment to the realization of more structural and fundamental changes in relation to economic, social and cultural issues. These portend profound and fundamental reorderings of societal goods, and appeared to recognize the conditions conducive to the production of violence in the first place were in the sights of the peace process. The peace agreement seemed to promise much wider changes across human rights and equality, matters of economic and social justice, the need for participation and the promotion of the Irish language.

Human rights and equality norms have a particular relevance and attraction in a post-conflict society. They provide an objective set of standards to assess public policy and provide mechanisms to address long term grievances that remain unresolved from the conflict's negative human rights practice. This is enormously important in a conflict defined by a legacy of human rights abuses which in turn defines the basis of division in a fractured post-conflict society. Positively, the peace agreement holds substantial formal commitments to the incorporation of fundamental human rights. It provides for the incorporation of the European Convention on Human Rights, a catalogue of largely civil and political rights, creates a new Northern Ireland Human Rights Commission and Equality Commission of Northern Ireland provides that the new Northern Ireland Human Rights Commission would be tasked to advise on a Bill of Rights that would supplement the rights in the European Convention on Human Rights (ECHR), themselves largely civil and political in character.

Multiple commitments to equality and non-discrimination run through the Agreement. There are references to equality and non-discrimination in relation to human rights. There is recognition for the equality of civil, political, social and cultural rights and for the right to be free from discrimination, and the novel principles of parity of esteem

⁶ Clara Sandoval-Villalba, 'Reflections on the Transformative Potential of Transitional Justice and the Nature of Social Change in Times of Transition' (2017).

⁷ Colm Campbell, Fionnuala Ní Aoláin and Colin Harvey, 'The Frontiers of Legal Analysis: Reframing the Transition in Northern Ireland' (2003) 66 *Modern Law Review* 317.

and 'just and equal treatment'.⁸ The peace agreement anticipates the strengthening of the fair employment legislation. And the peace agreement includes what was at the time a very progressive step to introduce equality mainstreaming measures in the form of a statutory duty on public authorities to promote equality of opportunity. This last measure would become known as the section 75 duty as it was given legislative form in section 75 of the Northern Ireland Act 1998. The section 75 duty was meant to put equality at the heart of public administration in Northern Ireland and in particular to create a more participatory model of governance. Compared with other peace processes concluded in the same time frame, the thread of human rights institutionalization runs firmly through the Northern Ireland peace agreement, and demonstrates a keen understanding that lofty principles of human rights in a peace agreement would be insufficient to address the legacy issues and the transformative demands for human rights protection that defined the negotiation and its conclusion.

*"So social and economic transformation, if you want to put it that way, would have to be part of a peace settlement. (...) the actual text of the agreement over and over again gives emphasis to equality, to the basic division, if you like, in society between Protestants and Catholics and also to the question of economic development. So, in that sense, you can't distinguish the idea of a rights-based society from one that is fairer, at least in terms of some of the main divisions in society, which explicitly include gender in the text of the agreement."*⁹

The peace agreement also firmly addresses matters of economic and social justice which were defining of the causalities and perpetuation of conflict. In this regard, the connection forged between the substance of the agreement and the practice of fundamental societal change, is at face value substantial. Many peace agreements have tended to co-opt the language of civil and political rights and it is these first generation right that have tended to define and shape the 'rights content' of peace processes.¹⁰ The Northern Ireland peace agreement is unusual in that social and economic rights, and procedural protections for those rights are defined in the agreement, thus anchoring human rights in concrete mechanisms to deliver them in practice. This link is illustrated by the statutory equality duty which is a key part of the peace agreement for those concerned about poverty, but it is not the only one. The Agreement further refers to the concepts of targeting social need and objective need. As part of the Economic, Social and Cultural Issues section the Agreement committed to a 'new more Focused Targeting Social Need initiative', measures to combat unemployment and to eliminate the unemployment differential between the two communities 'by targeting objective need'. This specificity of language in the peace agreement moves it in our view beyond the purview of 'ordinary' change and towards advancing structural and foundational moves in Northern Ireland. The depth and delivery of those changes in practice are the subject of particular contention, particularly among civil society actors, but their inclusion is indicative of a stance towards change that is distinctive in peace agreement practice.

Structural transformation is also found in the ways by which the peace agreement looks forward to a more participatory model of governance, and the potential for transformation of governments portends ways in which other substantive social and economic changes can be pressed into action. For example, the peace agreement

⁸ Constitutional Issues 1(v).

⁹ Interview No. 2. Director of a Human Rights organisation. 1 September 2020.

¹⁰ Rory O'Connell, Fionnuala Ní Aoláin and Lina Malagón, 'Are Economic, Social and Cultural Rights Side-lined in Peace Agreements? Insights from Peace Agreements Databases' (2022) 26 Gonzaga Journal of International Law 25-56.

specifically refers to the 'right of women to full and equal political participation'. Post-conflict inclusion practice is also found in other parts of the agreement including the section 75 duty which could provide for wide consultation on the equality implications of public authorities' policies, and to enable civil society organisations, including 'community groups, pressure groups and unions', to contribute to policy formation.¹¹ Here again, the idea of structural barriers in existing ordinary politics was being challenged through the peace process as mechanism to entry were created for new actors and institutions through innovative public policy mechanisms embedded in the formalities of the peace agreement itself. Finally, the Agreement also provides for institutional expression of the need for wider participation by proposing the establishment of a 'Civic Forum' comprising representatives of the business, trade union and voluntary sectors. This was intended to provide for a consultative mechanism specifically on 'social, economic and cultural issues'. The Agreement envisaged that there might, in addition, be an all-island consultative assembly appointed by the Dublin and Belfast administrations, to consult on social, cultural and economic issues. All of these layers of inclusion and institutional reordering promised new kind of politics and a different playing field to bring in new actors, re-order old institutional hierarchies, and enables a set of interlocking changes to advance profound and ambitious structural change.

II. Power Reasserts Itself

Other scholars and observers have already catalogued the non-implementation of the peace agreement's promise and potential: the absence of a Bill of Rights, the dissatisfaction with the Section 75 equality mainstreaming duty, the disappearance of the Civic Forum, the lack of an anti-poverty strategy. How and why have these perceived failures come to pass, where has transformative and structural change gone?

Our research identifies several different problems with the implementation of the transformative promise of the peace agreement: hierarchy and imprecision in the text of the Agreement itself, the lack of an enforcement mechanism for key provisions central to structural change, proceduralism over substance, the intricacies of a consociational power-sharing arrangement and the failure to reform key formal and informal power structures.

Hierarchy and imprecision in the wording of the Agreement itself

While the peace agreement contains substantial language that suggests commitment to significant reforms, the exact language used also hints at later problems. The Agreement's formidable and symbolic sub-section on 'Human Rights' is specifically oriented towards the protection of civil and political rights. In a classic sense, this might be seen as a triumph for human rights ascendancy in a peace agreement formula. Such rights inclusions affirms some of the historical grievances that sustained the conflict and offers important pathways to structural change. But significantly, the Human Rights sub-section speaks of the importance of 'civil rights' and 'religious liberties'; signalling a prioritisation of the sectarian interpretation of the conflict with an emphasis on those rights that are coded 'orange and green'. The sub-sections go on to establish that the signatories affirm eight rights; most of these are clearly in the classic civil and political rights tradition (free political thought, religion, right to pursue political aspirations, the right to seek constitutional change, choice of residence, freedom from sectarian

¹¹ Christopher McCrudden, 'Mainstreaming Equality in the Governance of Northern Ireland' (1999) 22 Fordham International Law Journal 1696, 1769-1772.

harassment). Distinctively, given the general lack of attention to economic and social rights in peace treaties of this time the list mentions 'the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity'; thus economic and social rights are included but primarily through the legal prism of non-discrimination. As we discuss further below, it is this marginalization of the social and economic that will come to have a sizeable influence on the perception of the success of the peace process, as well as its long-term structural implications for the rights of individuals and communities.

A critical part of the debate about human rights in post-conflict Northern Ireland was the possibility of a bespoke Northern Ireland Bill of Rights. While the Bill of Rights would clearly support classic civil and political rights protections, the Bill envisaged in the 1998 Agreement was an opportunity for civil society to advocate for economic and social rights:

"A Bill of Rights would be a sort of hopefully a good exercise in kind of civic societies of building. And within that, obviously, from the outset, we argued and continue to argue that socio-economic rights would be included in that."¹²

But, in the black and white text of the Agreement, little detail was provided on the possible scope of the new Bill of Rights, holding a constructive ambiguity on the scope of the rights being advanced by the Agreement. When deconstructed it is clear that what the Agreement primarily envisaged was a process to advance discussions within Northern Ireland society on its rights-securing future.

"...when I look back on it, the Bill of Rights, we just asked for a consultation around a Bill of Rights. We didn't put anything; we didn't argue for anything to be in the text or subsequent texts about what it should contain. And we were just grateful that it was in the agreement, reference was made to it and reference made to the Human Rights Commission, gave it as a responsibility to the newly created Human Rights Commission. So, there you've got a vehicle for further debate, you've got your mechanism for bringing it forward. But no principles, no detail, nothing about what it should or shouldn't contain."¹³

The lesson of course is that peace treaties work best for the issues they champion when they are specific in defining their scope of action. The public can be swayed by symbolic gestures in a peace agreement, but in reality structural changes in rights enforcement demands detail and specific obligation. The lack of detail in the Agreement fundamentally reflects the (lack of) priority given to human rights in the negotiations, and the 'haphazard' way in which they were treated.¹⁴

¹² Interview No. 4. Former Director of a Human Rights organisation. 9 September 2020.

¹³ Interview No. 4. Former Director of a Human Rights organisation. 9 September 2020.

¹⁴ Smith and Green quoting the late Stephen Livingstone: Anne Smith and Leo Green, 'The Processes of the Unfinished Businesses of the Good Friday/Belfast Agreement: An All-Island Charter of Rights and the Northern Ireland Bill of Rights' (2016-2017) *Irish Yearbook of International Law* 23, 34.

The Lack of Enforceability of the Peace Agreement

A further difficulty concerns the enforceability of the peace agreement. The Agreement is a text of different parts but includes an international treaty between the sovereign states of Ireland and the United Kingdom. While a 'binding' international treaty, there is no conflict resolution mechanism or international forum to consider disputes that arise in respect of the treaty language or differences in interpretation as to the obligations that mutually and singly bind both sovereign states. Both states are dualist in international law, so treaties are only enforceable in domestic courts to the extent provided for in domestic legislation or other legal norms. Ireland has a reservation about the jurisdiction of the International Court of Justice and the United Kingdom famously has a 'political' constitution. This lack of redress for a failure to implement, or a gap in implementation as between sovereigns, has been clearly seen by civil society:

*"I think one of the most significant weaknesses in the Good Friday agreement was the absence of a dispute resolution mechanism. But there are so many provisions within the agreement that have either not been implemented or have been rolled implemented, then rolled back or have been implemented in a very half-baked manner."*¹⁵

In late 2020, the weakness of the UK's dualist approach to international law and its unwritten constitution were highlighted by the remarkable provisions in the UK Internal Market Bill as originally introduced into before Parliament. As originally proposed this Bill authorised ministers to break binding international treaties. Subsequently this was withdrawn but that it was even contemplated demonstrates a casual attitude towards respecting international legal obligations. Enforceability in a universe where the perceived value of an agreement to end political violence diminishes over time is deeply challenging. That kind of external enforceability is also challenged by a lack of domestic enforceability for key symbolic aspects of the agreement (for example the inclusion of women in public life), which while laudable has no entry point to actualization in public policy or political practice.

Proceduralism over substance

A further problem has been an emphasis on procedure over substance in enforcement of the peace agreement's substantive provisions. This has been a particular problem with the equality mainstreaming duty in section 75 of the Northern Ireland Act 1998. Recalling this innovative public policy device was seen as a means to bring affected communities into meaningful dialogue with government about the proposals that would impact them as a result of government policy. The Agreement promises innovative equality measures:

*"And therefore, you needed robust protections for economic and social rights in order to remove some of the causes of conflict. Now, what the agreement provided, as we know, the equality duty provided and enhanced fair employment legislation, and we did, we end up for a brief transitional moment with some of the most robust equality legislation anywhere on the planet."*¹⁶

¹⁵ Interview No. 1. Director of a human rights organisation. 26 August 2020.

¹⁶ Interview No. 1. Director of a human rights organisation. 26 August 2020.

The development of those equality measures and in particular the statutory duty to promote equality has been criticised as disappointing by community activists and scholars alike. The quote above continues:

“...some of the most robust equality legislation anywhere on the planet. Now, well, that's history now. And we're well behind.”¹⁷

The Northern Ireland Act 1998 implemented this statutory duty in section 75, and so it is frequently termed the section 75 duty. Section 75 imposes a duty on designated public authorities to have due regard to the need to promote equality of opportunity. There have been multiple problems with section 75. One of the key challenges in practice has been the sense (and the illustrated reality) that “*Section 75 is a process that is technically very cumbersome.*”¹⁸ The nature of a highly specific statutory duty brings technical and procedural weight, but the difficulty of advancing a meaningful process without burdening those who are intended to be its recipients has proven to be a particular burden to meet its transformative potential. Its implementation and development has been highly focused on process leading to a form of stasis that has produced the opposite of transformative change and rather entrenched status quo decision making and outcomes for vulnerable and particularly affected communities:

“the extent to which that's been implemented is problematic in terms of the some of the specific measures like Section 75, there's been a tendency to reduce it to bureaucratic formalism rather than make it a dynamic tool for social change.”¹⁹

Section 75, while bearing the weight of symbolic human rights change has also been burdened by a lack of effective domestic enforcement. Unlike the equivalent statutory equality duties in Great Britain, the courts in Northern Ireland are reluctant to enforce section 75 obligations in judicial review proceedings.²⁰ This lack of judicial teeth means that that public authorities (the putative targets of section 75 action) do not consider the equality measures to have any meaningful consequences for their day to day implementation of policy. This institution prevarication undermines and reworks the peace agreement formula from symbolic and practical vehicle of change to a tamed creature that has created resentment and perceptions of non-delivery for the peace agreement as a whole.

Power-sharing and its Discontents

A further obstacle to transformative changes lies in the tension between the powersharing (consociational) dimensions of the peace agreement and its more transformative dimensions.²¹ There is a risk that the power-

¹⁷ Interview No. 1. Director of a human rights organisation. 26 August 2020.

¹⁸ Interview No. 3. Member of a human rights organisation. 7 September 2020.

¹⁹ Interview No. 2. Director of a Human Rights organisation. 1 September 2020.

²⁰ Katie Boyle, *Economic and Social Rights Law: Incorporation, Justiciability and Principles of Adjudication* (Routledge 2020) 231-232.

²¹ Colin Harvey and Anne Smith, 'Designing Bills of Rights in Contested Contexts: Reflections on the Northern Ireland Experience' (2020) 44 *Fordham Int'l LJ* 357.

sharing dimensions of the political settlement can ‘constrain deeper aspects of political transformation’,²² stymie progressive change or worse result in a tendency to return to sectarian carve-ups. Indeed in some ways the political evolution of Northern Ireland since the signing of the peace agreement has seen a greater emphasis on the protection of the interests of the two main communities, at the expense of the development of a pluralistic and multidimensional democracy defined around intersectional rather than sectarian axes. The Northern Ireland Act 1998 established a system of cross-community voting which incorporates a petition of concern mechanism (a mutual veto mechanism) going significantly beyond the petition of concern mechanism described in the Agreement for instance.

The temptation in such a system may be to keep ‘both sides’ happy but that comes at a tremendous cost to the integrity of the peace agreement and in particular to the change agenda (connected to rights) many observers presumed it would deliver:

“I mean, I think that that housing situation for me in North Belfast was the starkest example of that, where it was saying the people negotiated people out of the right to housing to keep each other side, each of the other sides sort of happy.”²³

The powersharing arrangements have been used to stymie progress on issues entirely unrelated to the fundamental constitutional interests of the two main communities but which have been important for realising rights implementation across the community.

One particularly salient and unexpected feature has been the gendered implications of consociational political arrangements in Northern Ireland. The nature of powersharing appears to particularly undermine women’s participation and rights in this post-conflict settings. Women may be sidelined in the rush to protect the interests of the main communities or the power blocks representing them.²⁴ Add this to the ongoing economic and social disenfranchisement experienced by women, and the total costs of under-enforcement of the peace agreement can lead to deep cynicism and anomie among sectors one would expect to be its strongest proponents.

“We have instead been blocked by, I believe, a misuse of the Good Friday Agreement. So at the moment, the Minister for Health says that because abortion is a controversial issue, that it needs to go to the executive before it can be enacted. However, this was primary legislation that came from Westminster, the Good Friday Agreement whenever it was talking about controversial issues, I don’t think it was talking about basic human rights. I think it was talking about sectarian issues. And they know that, there they might be using the letter of the law in terms or the letter of the agreement in terms of the Belfast Agreement on the Good Friday Agreement, but they’re certainly not using the spirit of it.”²⁵

²² Kris Brown and Fionnuala Ní Aoláin, ‘Through the Looking Glass: Transitional Justice Futures through the Lens of Nationalism, Feminism and Transformative Change’ (2015) *International Journal of Transitional Justice* 1, 2.

²³ Interview No. 16. Human Rights Activist. 5 November 2020.

²⁴ Kris Brown and Fionnuala Ní Aoláin, ‘Through the Looking Glass: Transitional Justice Futures through the Lens of Nationalism, Feminism and Transformative Change’ (2015) *International Journal of Transitional Justice* 1, 5.

²⁵ Interview No. 11. Member of a women’s rights organisation. 2 February 2021.

It is apparent that a mutual veto arrangement in a power-sharing system can enable a conservative political party to block progressive social change in a post-conflict setting. But it can also enable other political parties to avoid hard issues, and becomes a convenient means to do 'ordinary politics' by clear avoidance of the 'transformative' via the procedural:

"I think one of the big things that we've always come across and the peculiarities of our own sort of peace process, but it was particularly in the previous administration, the Sinn Fein, DUP ...? Well, essentially, what you had was a veto over now that operated when it got pushed to its most, it ended up in a petition of concern getting vetoed around things. But as a daily kind of operational thing, the way we found it working was, OK, housing inequality exists, particularly impacts that the what you would call the Republican community, nationalist community. The people who are going to be naturally advocates of that would be Sinn Fein, who are the major partner in government. They know that bringing it to the DUP will just get not, that's not going to make it to the programme for government or anything like that. So, all of the sudden, they're making cold political calculations as to whether it's worth their time bringing the issue of housing equality to the executive table when they're not going to get anywhere, anywhere with it."²⁶

Failure to reform key formal and informal power structures

Power-sharing has been an obstacle to progressive change while at the same time a significant change itself to power structures in Northern Ireland. Simultaneously, it highlights how other power structures, formal and informal, have not been changed by the peace agreement. For instance, the Agreement has nothing to say about the civil service and there has been no major reform of the civil service post-Agreement. This permanent infrastructure of governance, the repository of knowledge and old practice, remains consistently in place, even as the outward appearance of business as usual has changed. The intact and undisturbed nature of the permanent institutions and personnel of governance left some of our interviewees with the view that the traditional civil service is ill-equipped to deal with pressing economic and social challenges:

"I'm going to say one word is incompetence. And I meant, I work with the department every day, and some people in the department are really lovely. And one of the things that for us it faces when we train to become an advice worker, we need to know the spectrum. So, I need to know how universal credits work, I need to know how our legacy benefit works, I need to know how ESA works. I need to know everything about all benefits. When you go into government, number one, when you go into civil service and I brought this up with them, funnily enough, two years ago when they were recruiting for universal credit workers, they put out a call, first of all, for I think it's like customer service people. They don't even recruit into a specific role. Then, people are just applying for a generic job in the civil service not realising that they could be on the front line of dealing with

²⁶ Interview No. 15. Director of a human rights organisation. 6 November 2020.

people who are going to throw the roof off if they don't get there 100 pounds at the end of the week.”²⁷

Our data suggest that it is not only formal power structures that have been left untouched by the process of the peace agreement. In parallel, the unofficial patriarchal structures and representation in governance have mostly remained static and have not been challenged. Women’s participation in public life was formally included as a provision in the peace agreement and while there have been some notable political success for women, but it is not possible to say that full and equal participation in public life has been secured:

“However in endorsing the Agreement it also endorsed ‘the right of women to full and equal political participation’ which was included in the Rights, Safeguards and Equality of Opportunity Section and Paragraph 1 of the Of the Rights, Safeguards and Equality of opportunity Section of which included contained in Paragraph 1, and ‘the right to equal opportunity in all social and economic participation. [trade union organisation] fully supported and campaigned for the right for women to full and equal participation and also for the Civic Forum. However, when the Institutions we re-established after the first collapse of the Assembly, the Civic Forum disappeared off the agenda and while the participation of women in civic society has increased, as has the number of women elected to the Assembly, we are still have some way to go to achieve gender equality, despite the current First and Deputy First Ministers being female.”²⁸

This comment highlights that there have been some obvious high-profile political successes for individual women.²⁹ There has indeed been change – at the start of 2020 three of the five main political parties were led by women - but this does not reflect a coherent policy and process. For instance the Executive established a 15-member Commission on Flags, Identity, Culture and Tradition that included precisely one woman.³⁰ There is no strategy or policy that ensures there is participation in public life at different levels and this leads to the reproduction of gender hierarchies, particularly in a context where the traditional community divide receives prominent attention:

“I think that the whole peace process, it became very, very sort of looking at Protestant, Catholic and sort of they moved away from women. I think the woman sector was very ... [they] lost a lot of funding and then and then became very divided because of that as well. But I think it was more really within the community areas where people may have been more women, but the men had

²⁷ Interview No. 12. Food bank Coordinator. 12 February 2021.

²⁸ Interview No. 9. Former trade union leader. October 2020.

²⁹ This is not to say that all has been well in the elite institutions. On the contrary, women have faced ‘sexist exclusion, gender-based harassment through verbal intimidation and ongoing marginalization of core issues of sexual rights and sexual autonomy’ Kris Brown and Fionnuala Ní Aoláin, ‘Through the Looking Glass: Transitional Justice Futures through the Lens of Nationalism, Feminism and Transformative Change’ (2015) *International Journal of Transitional Justice* 1, 8. Turner and Swaine offer a more recent and detailed picture of how failures in protection affect the participation of women in politics: Catherine Turner and Aisling Swaine, *At the Nexus of Participation and Protection: Protection-Related Barriers to Women’s Participation in Northern Ireland* (International Peace Institute, 2021).

³⁰ <<https://www.executiveoffice-ni.gov.uk/news/foster-and-mcguinness-announce-membership-commission-flags-identity-culture-and-tradition>> accessed 8 July 2021.

more control. And I think that was sort of key on some of the boards in North Belfast where there was maybe no woman or one woman or 12 men or that woman's role, women didn't have a voice within the political system or the labour community political system in the way that they did for the kept communities going throughout the conflict.”³¹

Civil society activists note that even when women have traditionally been involved in community and voluntary work, their participation is potentially reduced when these activities become more professionalised or attract more funding or prestige:

“I think once there is some credit given for something and some perception of importance and power and money and all of those things, and certainly the stuff that wasn't remotely glamorous or interested or beneficial seeming to other people suddenly becomes much more attractive.”³²

The temptation in a post-conflict society that has adopted a power-sharing political system may be to focus on the traditionally perceived main communities, entrenching male privilege³³ and overlooking men and women who do not fall into the traditional main communities. This distracts attention from other equality issues; more attention to other equality issues may help to disrupt the temptation for these systems to fall into a “sectarian carve-up”:

“And some people were saying vote for everybody except for Sinn Fein and Women's Coalition. I could never understand that because, you know, I thought, you vote for SDLP but not the Women's Coalition? and what was not objectionable. But I think, maybe t's about kind of a threat to their culture, something that does reach across, and it is not a thought maybe thing as much. But I always thought I never really sort of questions it at the time. I just always thought it was strange. And then when I was working in the woman sector, anything that undermines this kind of sectarian divide, I mean, part of the reason that I don't like the peace agreement was the kind of the sectarianization, I mean, I don't know how that would have been addressed better, but it was sort of you had to be unionists, nationalists or other.”³⁴

To conclude here, the transformative potential the Agreement has been impeded by a combination of factors, including the imprecision and hierarchies in the language of the Agreement, the lack of enforcement, a tendency towards proceduralisation, power-sharing and failure to reform key formal and informal power structures. Social change in a fundamental sense remains elusive in Northern Ireland, and structural transformative change well out of reach for these intersecting factors.

³¹ Interview No. 16. Human Rights Activist. 5 November 2020.

³² Interview No. 13. Director of a women's organisation. 1 February 2021.

³³ Kris Brown and Fionnuala Ní Aoláin, 'Through the Looking Glass: Transitional Justice Futures through the Lens of Nationalism, Feminism and Transformative Change' (2015) *International Journal of Transitional Justice* 1, 3.

³⁴ Interview No. 16. Human Rights Activist. 5 November 2020.

Power, civil society and solidarity

The resistance to implement transformative change speaks of the resilience of existing power structures even amidst partial transformation. Other sources of power also exist; for Arendt, power is not force: Power corresponds to the human ability not just to act in concert.³⁵ Northern Ireland provides lessons in the power of civil society to support more transformative change even in the context of resistance. And in so doing civil society relies on the ambiguous wording in the Agreement and subsequent agreements to demand transformative change. Civil society played a significant role in ensuring that the Agreement included concepts like equality mainstreaming, a Bill of Rights and women's right to participation in the first place. Whatever the dissatisfaction with the implementation or non-implementation of these innovations, it is important that they exist in the Agreement as reference points, points of mobilisation for civil society action.

Civil society has taken different forms, and Northern Irish civil society organisations have been adept at selecting different forms of action, whether it be strategic litigation, supporting equality mainstreaming, developing public platforms and coalition building.

The St Andrews Agreement 2006 for instance builds on commitments in the Agreement about economic and social justice by requiring an anti-poverty strategy. There is a legal requirement in the Northern Ireland Act 1998, as amended, on the Executive to adopt such a strategy. In the face of Executive inaction on this front the NGO Committee on the Administration of Justice (CAJ) has secured a legal ruling that the Executive has failed in its obligations under the Northern Ireland Act. This has itself been a precedent for similar litigation.

Civil society has also developed more explicit political programmes as well as these somewhat legalistic tactics, with plans for a Feminist Recovery and a Rights-based Return to Power. Much of this work has been made possible through solidarity and coalition-building within Northern Ireland civil society. The Human Rights Consortium for instance is an umbrella group comprising 160 different organisations working to support human rights in Northern Ireland and in particular the need for a Bill of Rights. The Equality Coalition is a network of more than 100 organisations co-ordinated by CAJ and a trade union, Unison.

The record of civil society in Northern Ireland is an impressive one, but we also acknowledge the important challenges here. The fact that we rely so much on civil society is itself an indictment of the formal political institutions. More seriously though a peace agreement, a time of transition, also represents challenges as well as opportunities for civil society. Civil society organisations may face financial challenges, the loss of personnel, emotional and physical exhaustion and in extreme cases physical violence. Without support civil society cannot be relied on to remedy the defects of an inadequately implemented peace agreement.³⁶ The experience from Northern Ireland emphasises one crucial support that can sustain such organisations, which is solidarity, organized and consistent partnership and common cause among the different strands of civil society.

³⁵ Hannah Arendt, *On Violence* (Houghton Mifflin Harcourt 1970); discussed in Jürgen Habermas and Thomas McCarthy, 'Hannah Arendt's Communications Concept of Power' (1977) *Social Research* 3.

³⁶ See Fionnuala Ní Aoláin, Lina Malagón and Rory O'Connell.

"Sharing experiences on sustaining NGO participation in post conflict space: A Colombia - Northern Ireland dialogue." April 2022. Available at: <https://thegenderhub.com/blog/sharing-experiences-on-sustaining-ngo-participation-in-post-conflict-space-a-colombia-northern-ireland-dialogue/>

Conclusion

The Belfast/Good Friday Agreement remains an important step in Northern Ireland's peace process and the transition from a conflict. As we have seen it is a multi-layered text with commitments across many different areas ranging from internal democratic structures, cross-border institutions, human rights and equality to cultural issues (including the Irish language) and economic and social issues. In some respects, it seems to offer a promise of genuine transformation.

That promise of transformation though has not been delivered. Ambiguities and hierarchies in the text, the lack of enforceability, the tendency to proceduralisation, the power-sharing systems themselves and the failure to address different power structures has resulted in a situation that many key Agreement elements have not been implemented or have been disappointing in their implementation. While some key areas have been transformed, especially in relation to core political issues, others have not, what we have called ordinary social changes, using Sandoval's categorisation. This means relevant social changes. However, they do not transform the conflict's values radically.

Some of the problems we have identified lie in the legal nature of the Agreement - the language used, the lack of enforceability. Clearer more enforceable legal rules would help but we have to acknowledge two limitations. The first is that the Agreement, like all peace agreements, it itself the product of a political process and not primarily a legal one. Expectations as to what is possible have to be tempered by that realisation. And secondly we have to acknowledge the limitations of law as a tool of transformation. Even if there are important legal reforms, we know from feminist theorising, that the law is likely to offer only piecemeal incremental reform, often flawed by commitments to precedent and procedure over substance, and that if power structures are not transformed, the law is an unlikely engine of transformation.³⁷

Nevertheless the case study of Northern Ireland should not be grounds for unremitting pessimism. Sandoval stresses that fundamental change is an intergenerational project that takes a long time. There is still potential to deliver on the full promise of the Agreement. The most hopeful transformative message lies in the experience of Northern Ireland's civil society, which has played a significant role in securing elements of the Agreement and which since 1998 has impressively advocated for the transformative potential of the Agreement.

³⁷ Katharine T. Bartlett and Rosanne Kennedy, *Feminist Legal Theory: Readings in Law and Gender* (Westview Press 1991) 3-5.