

DÁIL ÉIREANN

AN COMHCHOISTE UM

FEIDHMIÚ CHOMHAONTÚ AOINE AN CHÉASTA

JOINT COMMITTEE ON THE IMPLEMENTATION OF THE GOOD FRIDAY AGREEMENT

Déardaoin, 7 Samhain 2019

Thursday, 7 November 2019

The Joint Committee met at 2.10 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies

Seanadóirí / Senators

Declan Breathnach,	Frances Black.
Maureen O'Sullivan,	
Brendan Smith.	

I láthair / In attendance: Senators Rose Conway-Walsh, Máire Devine and Ian Marshall.

Teachta / Deputy Seán Crowe sa Chathaoir / in the Chair.

The joint committee met in private session until 2.25 p.m.

Voting and Citizenship Rights of Citizens in Northern Ireland: Discussion

Chairman: As we have a quorum, the meeting will now commence. Apologies have been received from Senators Ó Donnghaile, Craughwell and Feighan. Deputy O'Dowd might be able to join us later, hopefully. The theme we are addressing now is voting rights in Northern Ireland and we are delighted to hear from Professor Colin Harvey. Members will be aware that the Government has proposed a referendum to extend the franchise in the election of the Irish President. Before we begin, I will complete the official statements.

I remind members, witnesses and those in the Public Gallery to turn off their mobile phones. I am not looking at anyone. Members are requested to ensure that for the duration of the meeting mobile phones are turned off completely or switched to aeroplane, safe or flight mode, depending on the device. It is not sufficient for members to just put their phones on silent mode as this will maintain the level of interference with the broadcasting system.

I remind members of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person or body outside the Houses of the Oireachtas or an official either by name or in such a way as to make him, her or it identifiable. By virtue of section 17(2)(f) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the joint committee. However, if they are directed by the Chair to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are also directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person or body outside the Houses of the Oireachtas or an official either by name or in such a way as to make him, her or it identifiable.

I welcome Professor Harvey. He has latitude to speak not only about the main issue in focus today but also about other issues. I invite him to make his opening statement.

Professor Colin Harvey: I thank the committee for the invitation to attend. I am pleased to be here. I refer members to the written version of my opening statement, which I have provided. I will not necessarily read all of it, but I will go over the main points. I will first contextualise the discussion and then consider the question of citizenship in the context of the voting rights issue we are reflecting on this afternoon. I want to put this discussion in a wider context without losing sight of the specific issue concerning voting rights in presidential elections.

Any number of contexts could be mentioned, but I will focus on two. One is Brexit and what is happening with that. We have a withdrawal agreement and a protocol on Ireland and Northern Ireland. It is important to underline, in respect of the withdrawal agreement and protocol, that there are references there to human rights and equality protections, as well as matters such as the continuation of the common travel area. My sense is that those aspects of the protocol have been rather neglected in public discussion thus far. It is important to highlight that there is recognition in the much discussed protocol of commitments to rights and equality.

One issue concerning voting rights, which I raise in the written version of my statement, is that it is important to reflect on is what happens regarding the European Parliament once

Northern Ireland and the UK leave the European Union. There has been some discussion already, as members will be aware, as to how Northern Ireland's voice might be represented in the European Parliament in a post-Brexit context. I wanted to highlight in my written paper what might be done by the Irish Government around voting rights but also questions around possible observer status to ensure a voice from Northern Ireland continues to be heard in the European Parliament after Brexit. There has been quite a discussion about the democratic element of what will essentially be a special arrangement for Northern Ireland as reflected in the protocol. That aspect of it has been rather neglected. There has been much discussion of the mechanism around the Northern Ireland Assembly.

The second context is the implementation gap with respect to the Good Friday Agreement. There is a question around the birthright provision of the Good Friday Agreement. This concerns the right to be British, Irish or both and to identify and be accepted as such, along with the outworkings of the DeSouza case and where that is at. What is emerging is that British law policy and practice really needs to change to fully reflect that commitment to the birthright guarantee. What emerged from the Upper Tribunal decision is a sense that the Home Office and the British Government feel their interpretation of the agreement is the correct one and it is not an admission but deliberate. That is concerning to all of us. There is a widespread view, including that of the Government which the Taoiseach made clear, that it is a misreading of the agreement. That needs to be addressed in the negotiations to come.

In the discussion around the birthright clause, we are talking about the rights of British citizens, Irish citizens and the right to be either or both. What is worth underlining is that the Good Friday Agreement packaged that within a broader human rights framework. That has been neglected. For example, there is still no bill of rights for Northern Ireland flowing from the Good Friday Agreement. There is no charter of rights for the island of Ireland as anticipated in the agreement. In my written submission, I gave an example from the advice submitted by the Northern Ireland Human Rights Commission in December 2008 in which it recommended a cultural and identity clause. Way back in 2008, the commission had already recognised the problem that we are now facing into regarding domestic incorporation of those provisions.

We have really felt the absence of a comprehensive human rights framework as anticipated by the Good Friday Agreement in the North and on the island. Brexit makes that conversation one that is urgently needed in terms of the protections people need now and into the future. I really want to underline the need to revisit that discussion as part of the ongoing negotiations and conversations that are happening.

On issues such as parity of esteem and equal treatment, I refer members to the Irish language legislation and the failure to fulfil promises in that regard. The presidential voting rights issue is its own specific question. There is a rather troubling and worrying framework in which this conversation is taking place. There is a sense in which the human rights promises of the Good Friday Agreement have not been taken forward in the way anticipated. Commitments around mutual respect, parity of esteem and equality of treatment remain unfulfilled in law policy and practice. The good news is that there are solutions to some of those problems. The tricky bit is getting those solutions implemented in practice in the time ahead.

Citizenship and voting rights are relatively straightforward. The Constitutional Convention in 2013 made clear recommendations on what should happen on that both for all Irish citizens and Irish citizens living in the North. There was an options paper in 2017. We now have the Bill, the Referendum Commission and perhaps a referendum happening at some point in the near future. There is a growing international European trend towards the recognition of non-

resident voting rights. It is clear, as members know from the evidence that they have already seen, that Ireland's restrictive approach is a real outlier both on a European basis and internationally. The right to vote is a fundamental civil and political right. There is a strong citizens' rights rationale for taking this forward and, increasingly, given international trends and international practice, of basing that right not on residency but on citizenship. My own sense is that the blanket system which currently exists in Ireland cannot be justified. Change is reasonable, proportionate and justified given international practice and given the fundamental importance of this foundational civil and political right.

The issue of people over territory is very much at the heart of the Good Friday Agreement. Taking forward this initiative of presidential voting rights will have the advantage of beginning to tackle some of the barriers that separate us on this island and internationally, as well as overcoming mutual misunderstanding and mistrust. In that context, it is important to bear in mind that the UK system permits overseas voting in certain contexts.

The Irish Constitution speaks to all citizens. It talks about a shared island and speaks to the diaspora as part of a global conversation about citizenship and the Irish nation. What is being proposed is, in our rather febrile times, reasonable, sensible, modest constitutional reform, dealing with a specific issue, presidential voting rights, which would bring Ireland into line with what is happening internationally.

In my written submission, I proposed several recommendations which I will share. First, we need to revisit the sort of comprehensive human rights framework for Northern Ireland and for the island envisaged in the Good Friday Agreement. That includes revisiting proposals from the Northern Ireland Human Rights Commission on a bill of rights and proposals from the North-South joint committee for a charter of rights for the island. Brexit makes that conversation essential. We must keep in mind that the Conservative Party - who knows who the next British Government may be - has talked consistently about repealing the Human Rights Act and replacing it with the British Bill of Rights. We need to revisit that discussion. The birthright guarantee of the agreement matters not just for Irish citizens but British citizens as well. It also matters not just now but in the future. We should remember it is an obligation that will persist in the event of constitutional change. British domestic law, policy and practice have to change to reflect that agreement provision. As the Taoiseach has made clear, the current British position is a misreading of that clause.

We also need to give more thought than is currently being given to a representative voice for the North in the European Parliament post Brexit. We need to have discussions on voting rights as well as possible observer status in the European Parliament to make sure not only that the Northern Ireland Assembly has a voice in the new arrangements but also that the voice of Northern Ireland is heard at the European Parliament going forward given the special status that will emerge.

I will end with a forceful point on voting rights in presidential elections. We live in a world of myths and fake news and in rather febrile and difficult times. Ultimately, having thought about this issue for a number of years and having spoken to the Constitutional Convention in 2013 and done quite a bit of work on it, my view, given what is happening internationally, is that this is a modest, reasonable change that relates specifically to the voting rights in presidential elections. Others do this. It is good to see the Government making progress on the issue and it would be useful to see a referendum on it as soon as possible. Support for the principle of non-resident voting rights is growing and has gained widespread European and international support.

What worries me about this discussion is the temptation to focus excessively on risks. That neglects the opportunities and benefits of enhanced engagement with Irish citizens wherever they live on the island or globally. Thus far, there has not been sufficient focus on the benefits to this island of enhanced engagement as part of work on promoting, in practical terms, the idea of global Ireland, having that level of engagement and ensuring people are fully engaged democratically with Irish society. To make a simple point, having looked at the large number of states around the world which do this - members will have seen all the evidence on this and they do not need me to go over it - I have concluded that the Irish State has the local and global capacity to do this and make it work. I thank the members for listening.

Senator Frances Black: I thank Professor Harvey for his presentation today. It is great to see him again. He always gives very clear and precise presentations.

I will make a few points and I ask Professor Harvey to comment on them and give his view. Ireland is an outlier on this issue. Of the 28 EU member states, 24 allow their citizens to vote from abroad, while only four, Malta, Cypress, Denmark and Ireland, do not. Germany had previously set a 25-year time limit on external voting but this was relaxed in 2012. The United Kingdom has a 15-year time limit but after a European Court of Human Rights, ECHR, case, it now plans to drop it. Internationally, the trend is moving strongly towards providing for external voting rights, with more than 120 countries now having done so. These figures emphasise how out of step we are on this issue.

On the legal aspect, in 2014 the European Commission Vice-President, Viviane Reding, was strongly critical on this matter, suggesting a potential legal challenge in the Court of Justice of the European Union. She said:

The right to vote is one of the fundamental political rights of citizenship. Depriving citizens of their right to vote once they move to another EU country is effectively tantamount to punishing citizens for exercising their right to free movement.

In this manner, she added, “suffrage becomes effectively suspended for the duration of the migration.” Does Professor Harvey agree that a legal challenge could be made on this matter? Is the issue different for Irish citizens who were born and are living in the North given that they have not moved country?

Should seats in the European Parliament be sought solely for Irish citizens living in the North or should they be for Irish citizens living anywhere outside the State? If the North leaves the European Union because of Brexit, is there a legal difference in terms of the right to vote between an Irish citizen living outside the State in Belfast and an Irish citizen living outside the State in Australia or the United States?

Professor Colin Harvey: I thank Senator Black for the questions. I agree with much of what she said. The evidence is crystal clear that Ireland is an outlier and is out of step. As the Senator said, some very strong statements have been made about the position in Ireland, which needs to change. My view is that the blanket nature of the Irish position leaves it vulnerable. As many of the members will know, courts do not like near-blanket exclusions and so there is a vulnerability there. As a matter of principle, being so out of step with European partners is in itself a rationale for addressing this issue now without the need for a future legal challenge. There is an opportunity to address this.

A number of issues arise in relation to the European Parliament. I will separate out two of

them. Given that the protocol envisages some form of potentially near-permanent arrangement for Northern Ireland going forward, the focus has been on the assembly and its role in this regard. The witnesses will know what the arrangements are. There has also been a discussion about making sure the voice of Northern Ireland is heard in the European Parliament going forward. I will separate out how that issue might be addressed. There are a number of suggestions around that, one of which includes the potential to provide for observer status to make sure it is addressed.

The second issue raises a wider point. We are having a conversation today about presidential voting rights and whether residents outside the State should be able to vote in those specific elections. Obviously, there is a bigger conversation to be had about voting rights in other elections. My own sense is that those conversations are for another day because we have reached a point in the discussion where there is a Bill with concrete proposals that are specific to presidential voting rights. It is important to keep the focus of the conversation on that. However, this raises a question in the longer term about other elections. As members will know much better than I do, in a context where there is often an appetite to take one issue and magnify it into 45 issues, it is important to note that this is about voting for the fundamentally important and symbolic role of the Irish President and extending voting rights for that particular election. The wider conversation needs to be had and is being had already. However, as we are facing into a referendum on this particular issue, perhaps it is one for another day.

Deputy Declan Breathnach: I will focus first on voting rights in presidential elections and then move on to citizens' rights. Very few people have a difficulty with extending voting rights in presidential elections to everyone on this island. Professor Harvey mentioned avoiding the risks. I would like to dwell on that for a second. The issue that concerns many people is the possibility of personality politics. We saw this to some degree in the previous presidential election. Has Professor Harvey looked at how people would qualify under the Bill he is discussing? I am not overly familiar with it. In tandem with this reform, would it make sense to reduce the voting age from 18 to 16 right across the island to give the opportunity to vote to people who obviously want their say? Professor Harvey might say this would confuse the issue. Does he have a view on show business personalities who run for a position for symbolic or other reasons but do not necessarily qualify for the role of President?

The issue of citizens' rights and birthrights under the Good Friday Agreement has been raised. The Tánaiste committed in this forum to addressing the presidential vote in October of this year. It has not materialised so it must have been put on the back burner. We challenged Robin Walker MP on citizens' rights at the British-Irish Parliamentary Assembly. He was at pains to point out that the agreement does not just offer the right to be British or Irish and emphasised the right to be neither. I thought this was interesting because it is not referred to in the Good Friday Agreement. It has been 20 years since the Good Friday Agreement was signed. Research carried out here in Leinster House makes clear that rights were amended last March to deal with migrants in Britain. As Professor Harvey says, the British Government has flagrantly decided on a different interpretation of the agreement. The Tánaiste and Minister for Foreign Affairs and Trade, Deputy Coveney, and the Dáil have committed to changing this. Why was it not considered before? In Professor Harvey's view, why has it taken almost 20 years for the need to enshrine this in legislation to reach our agendas? Very few people seem to have spoken about it until recently.

Professor Colin Harvey: First, I would like to keep the focus on the specific issue we are talking about with this Bill, that is, presidential voting rights and extending the franchise.

However, we are essentially talking about inclusion. There are proposals to move to a more inclusive system that embraces all citizens on a generous basis. As such, extending the franchise where age is concerned is a highly topical issue. Allowing people below the age of 18 to contribute to that conversation would be in the spirit of inclusion. Looking back, there have been siren songs about the implications of taking every step on the journey towards making the franchise more inclusive. We are talking about broadening the scope of the franchise in presidential elections. I am strongly in favour of examining voting age. Although the focus today is primarily on residency, age restrictions are also very much a live issue.

Brexit has been a major contributor to an enhanced focus on citizenship rights and identity in the past three years. The advice of the Northern Ireland Human Rights Commission in 2008, nearly 11 years ago, had already identified that this was missing from domestic law, policy and practice in Britain. There were voices pointing out that some core provisions of the agreement concerning parity of esteem, mutual respect and equal treatment were not fully and faithfully reflected in domestic law, policy and practice. Recent events have underlined that. It takes courageous individuals making a stand and bringing an issue to public attention, with all the difficulties that involves, to ensure that what is known in a smaller circle becomes more widely known. Then we can think about how that can be changed.

Senator Rose Conway-Walsh: I thank Professor Harvey for his presentation. I commend him on his report, *The EU and Irish Unity - Planning and Preparing for Constitutional Change in Ireland*. There has been some commentary around Queen's University. I would like reassurance from the Professor that all the ethical guidelines and frameworks were followed in the preparation of this report. It is very important to have reports like this, no more than reports addressing the merits of the union. That is what creates the conversation, and taking a proper academic and evidence-based approach to these conversations can only add to their richness. Will Professor Harvey comment on that, if he is free to do so?

Who is responsible for the bill of rights not being implemented? Is it solely within the gift of the British Government and domestic law to do that or is there a responsibility on the Irish Government as co-guarantor of the Good Friday Agreement? The tangible outcome of failure to address these things and fully implement all of the agreements was exposed in Ms Emma DeSouza's case. My other question concerns identity and the right to choose. Apart from the Emma DeSouza case, are there other ways to highlight the lack of those rights to hold a British or Irish identity or both?

Regarding presidential voting rights, I commend the work done by Votes for Irish Citizens Abroad, VICA, in Britain and our own colleague, Senator Lawless, who has also worked hard on this issue. It is astounding that there seems to be cross-party agreement. I have never met anybody who was against offering voting rights based on citizenship rather than residency. Perhaps I will ask Professor Harvey if he has. I certainly do not think it is anything to be feared. As somebody who lived outside of the country for a long time, I would certainly have appreciated the right to vote in presidential elections. If everyone is in agreement on it, what are the barriers to it actually happening? All of the costings have been done, so it is not an issue of cost. It is not a matter of disagreement between parties or anything else. Why is it being stopped, and what more can we do to make that referendum happen? We were hoping it would have happened by now, in October of this year. We are all fearful of getting to the end of this Government and a new one beginning, whereupon we will start reinventing the wheel. The time for consultation is over and the time for implementation is certainly here.

Chairman: Before Professor Harvey comes in, a letter will issue to him and Mark Bassett

on the idea of coming before the committee to address the issue of a bill of rights, about which Professor Harvey wrote to the committee.

Professor Colin Harvey: I thank the Senator for her questions. This year, I have been researching the question of the constitutional future of the island. As a result, I have received feedback and constructive criticism but have also attracted quite a bit of tension in the public domain. I am sure members are all very aware of that as they get it themselves. I made a decision last week at an event I attended to simply mention out loud that I felt under siege in my institution as a result of doing that work. I do not want to in any way overplay or exaggerate that because I simply want to get on with doing the work. I recently worked on a rather tedious 80 page report, a rather boring one as is common with academics, with footnotes on which I would welcome feedback and comment. My view, and I may be wrong, is that in the current context, the responsible thing for academics and others to do is talk, plan and prepare for wherever we might be going on this island and these islands so I plan to continue to make a contribution to that. I would issue an invitation to everyone and anyone to speak with me. I am happy to engage with anyone on or beyond the island about the issues on which I have been working.

The absence of a bill of rights for Northern Ireland is a tragedy because we desperately need a comprehensive framework of human rights protection. Yes, we have the Human Rights Act but we do not have that comprehensive framework - that constitutionalised framework - that the agreement anticipated. There are proposals there. Why do I use the word “tragedy”? I use it because I think it would have helped. I am not saying it would have solved all our problems but it would have helped with regard to some of the challenges we face. Let me be clear about that. The advice was submitted to the Secretary of State in December 2008. The response from the British Government was rather dismissive. I speak as a member of the Northern Ireland Human Rights Commission at that time who was involved in the process. I simply think it is worth revisiting that work. I have given the committee an example from the advice. Can anybody tell me that this clause in that document from 2008 would not be helpful right now with regard to some of the things with which we are grappling? We could do with revisiting that.

It connects to the other question about the Emma DeSouza case. I do not want to simply list all sorts of things that have not been done but there is an issue relating to legislating for parity of esteem, mutual respect and equality of treatment in respect of the North. It has not been satisfactorily done. The case of Emma DeSouza highlights one part of that. The debate around an Irish language Act is increasingly part of that bigger conversation regarding not adequately reflecting the letter and spirit of the agreement in domestic law, policy and practice. It is a bit like the document mentioned earlier. The society in which I live is often caricatured in all sorts of ways. To be fair to us all, there are a lot of solutions on the table in terms of how some of the problems we identify can be addressed. The committee will note that I have also indicated the potential solution to many of the things I spoke about today, where the solution might be found and how it might be addressed. We face a real implementation problem that is addressed in respect of a number of issues but needs to be addressed in respect of other issues as well.

Does anyone disagree about presidential voting rights? What I sense about it is that one often hears an anxiety about a number of things. Members will have heard this as well. People are worried about the impact of people who are not resident voting on the outcome of elections, the administration of it logistically and how it will work. I took part in a radio programme this morning where the interviewer twice mentioned the issue of taxation and contribution so there are those anxieties, worries and fears about it that members will have heard, as I have. In respect of where we are at the moment and dealing with these things in the way we have through

the Constitutional Convention in 2013 and talking them through with elected representatives and members of the public - working up options and proposals and steadily, calmly and reasonably working through some of those fears and anxieties - citizens' rights are fundamental; we are an outlier globally on this but it can be done because other states manage this successfully. There are people voting in presidential elections in other countries on this island and being facilitated to do so. There is a sense in which, to borrow Michel Barnier's language, we need to make this rather boring and de-dramatise it. It is a modest and sensible proposal that we have the capacity to implement.

I will end with a slightly less academic contribution to this. When we talk about the conversation on presidential voting rights, it is not an academic conversation for people like me. I am an Irish citizen. I was born in Derry, sold out and now live in Belfast, which is the worst thing someone can do. This affects me personally. I would like to vote for my president so it is not just an academic issue. I would ask everybody in this room to think about our families - our brothers, sisters, mothers, fathers, aunts, uncles and cousins - and the people to whom we have had to say goodbye at ferry terminals and airports. When I travel home on the train this evening, am I also waving goodbye to my basic civil and political rights? There are statistics about the number of states that do this and the way they do it but at the heart of this is a very human story about people - our own families - and about including them.

Deputy Maureen O'Sullivan: I thank Professor Harvey for his fascinating presentation. What came across was concern about those aspects of the Good Friday Agreement that have not been implemented but have been allowed to slide. While progress has been made in some areas, there are certainly areas of concern where progress has not been made. What is coming across today is an undermining of the Good Friday Agreement and all it has achieved. Professor Harvey mentioned different interpretations on the part of Great Britain and here.

Where is observer status for Northern Ireland coming from? Is the argument that there should be the kind of observer status being mentioned in political or academic circles? We are coming into this really difficult space. We do not know what the UK general election will produce and there is no government in the North. How confident is Professor Harvey that his recommendations can be advanced? Where does he see the best chance of success for those recommendations being realised?

Professor Colin Harvey: I thank the Deputy for her questions. To respond to the first, regarding the agreement, whatever happens in the time ahead, and we are in very challenging times, that is where we will all end up again. When people use the language, which they do in the Brexit discussion, of the Good Friday Agreement "in all its parts", it means what it says: the Good Friday Agreement in all its institutional parts and in all the values reflected in the agreement. These islands will end up back there because it is a sophisticated document that deals with the totality of relationships that will need to be repaired and rebuilt in the time ahead. It remains unimplemented in many significant ways and is under strain, but what has been remarkable about the Brexit conversation is that although there have been some slightly interesting interpretations of the agreement, there seems to be universal endorsement of it and an agreement that we need to get back to it and back to making it work and that we can do so. The committee knows that the North of this island has been through some challenging and tough times. I think it is possible to make progress on that.

Academically, political points are being made about all this stuff but, in a very boring sense, one theme of the critique of the protocol has been the issue of democratic participation. One way in which that is being addressed is through this mechanism that has been put in in respect

of the assembly. I am just highlighting that there is a discussion as to whether this also means there needs to be a continuing Northern Ireland voice within the European Union in some way, including in the European Parliament. I say this just to highlight that that conversation has been ongoing. I refer, for example, to work showing that it would be possible for the Irish Government to deal with voting rights issues. There are also mechanisms such as observer status for people in Northern Ireland to ensure there is some form of continuing participation.

We are potentially heading into never-ending forms of negotiation at multiple levels all at the same time. There is obviously the issue of re-establishing our power-sharing institutions in Northern Ireland. There will be an ongoing conversation between the European Union and the UK because, as we know, the withdrawal agreement and the protocol are just the beginning - I am sure we are all delighted about that - of a long conversation about the future relationship and where it will go. When negotiations are ongoing, it is always possible to find ways in which some of these reform proposals can be implemented practically.

Although I may sound rather despairing today, on this island we have gone to places that in the past people would never have expected us to go, and remarkable things have happened. We are in a challenging and difficult moment. I do not want to do anything here that would underplay that, but nor do I want to do anything that would talk us into an even worse space. The things I am outlining and which we have talked about today can be done. There are proposals to take a number of them forward. I think they will benefit people on both parts of this island so I remain optimistic that progress on all these issues is possible in the time ahead. The committee can tell me whether or not that optimism is wildly misjudged. If, however, we do not frame this within a more comprehensive human rights framework, we will store up problems for the future.

One point made in the report we talked about earlier, which got rather lost in the public conversation, is that we have real anxieties about the rights of British citizens on this island in the future arrangements. It is important that those rights are protected in the future, and the birth-right guarantee speaks to that. The UK will be a third country, essentially, outside the European Union, with all that that means for British citizens in the future. There is, therefore, a need for specific conversations and a discussion about the wider human rights framework.

Senator Máire Devine: I thank Professor Harvey. This is really interesting stuff. I have a few questions.

I refer generally to the reaction to the DeSouza case. Many people were gobsmacked by the ruling. There was a feeling of being held hostage to a citizenship to which one does not want to belong but which is imposed. The ruling has an implication for rights of access to various courts, tribunals and so on. When Professor Harvey says voting rights should be based not on residency but on citizenship, how would this work, given that Ms DeSouza, for example, has been told she is now a UK citizen? Is there an implication that if citizens living in the North and abroad had presidential voting rights, it would skew the vote?

Regarding the European seats, it is essential citizens in the North have a voice. Does Professor Harvey know how Europe views this? Are discussions taking place over there? I know that Martina Anderson, MEP, keeps the debate very much alive over there. We have two extra seats in waiting. There was at the time an idea that they should perhaps be devoted to giving a voice to the North. Is that still a possibility? One opinion is that at least one of the two seats should be devoted solely to representing the voice of the North in Europe as opposed to just having observer status. I am not sure how comforting that would be to people living in the Six Counties.

Approximately 250,000 people left this island during the most recent downturn. Unfortunately, this island has at times been known as one of tragedy and emigration. I refer to the extension of voting rights not just to presidential elections but to other elections, whether Dáil, local or whatever other elections deemed necessary, which is another conversation to be had. The fear might be that the memories of 250,000 people, most of them young, who were forced to leave might skew results in local or national elections because their votes may go to more left-wing parties, or what are perceived to be more left-wing parties. However, I believe they need to have a voice.

What are Professor Harvey's perceptions on the unfulfilled promises of the Good Friday Agreement? Obviously, we did not foresee Brexit at the time the agreement was drafted under a UK Labour Government. Since the Tories have come into power more recently on a platform of xenophobia and against migration, their co-operation or interest in resolving issues related to the Good Friday Agreement in the North has been called into question. There is a contrast with regard to ownership of the difficulties that need to be addressed. The Tories have no interest in addressing them except for their own ends and have no interest in the bill of rights we need for the entire island.

I have one more question. I participated in a debate on the European health insurance card in the Seanad about two weeks ago. While I am thankful the Government has proposed to bring in a card to cover citizens in the North, unfortunately people will have to load up the card and if anything happens abroad, they will have to pay for their treatment and then submit a claim to be reimbursed. It is a move in the right direction but it is very disappointing that one might have to source anything from €500,000 to €1 million for repatriation and then come back, find one's receipts and send them in to the HSE for a refund, whenever that might happen.

Chairman: Barry Andrews and Deirdre Clune would probably be upset because their two seats have already been allocated.

Professor Colin Harvey: We need to separate out a few things concerning the DeSouza case, which is not so much about removing Irish citizenship - that is not at issue - as it is about the imposition or conferral of British citizenship or identity on somebody without his or her consent and then the processes around renunciation. Irish citizens voting in presidential elections is a distinctive issue as well, so it would not affect that.

There is a sense that the European Parliament question is one primarily for the Irish Government to determine in terms of what it wants to do. Some clarity has been provided to the effect that if the Irish Government wanted to take that step it would be possible to do so. I want to put it on the table today that that is going to be a remaining question. It chimes with the debate that is happening. Effectively, Northern Ireland is going to have what looks like a special status or arrangement going forward, for the reasons that were agreed regarding a hard border, protecting the agreement and ensuring North-South co-operation. The question that also arises relates to a continuing voice for the North in the European institutions as well. This is something the Government has looked at, is thinking about and could look at in further detail in the context of how it might be addressed. I would encourage it to do so.

In terms of the electorate and how people might vote, Senator Devine is right that this often arises. It reflects anxiety about how people might vote, which parties or individuals they might vote for or how it might impact. There is a sense that we need more research on external voting to find out what is happening. There is a mixed picture in terms of the impact. There is work that talks about the lack of a distorting effect but Senator Devine has seen evidence in research

to suggest that it can have a significant impact in elections. I am not a politician, but my view on this is that, ultimately, when one is talking about the franchise and inclusion, at some point one has to trust the judgment of the electorate and the persuasion that will take place around that. This might be a slightly provocative thing to ask, but does one ultimately simply abolish elections because individuals might vote for the wrong candidate or the wrong party? I was reading on the train on the way down about a candidate for the Croatian presidential election who is planning a visit to Cork due to the forthcoming presidential election in Croatia. I think what it will do is encourage people to engage in a much more proactive way with the North and with the Irish diaspora, to not simply sloganise in respect of “Global Ireland” but to make the latter meaningful in terms of actual civil and political rights. What is missing from the conversation thus far brings me back to the comments I heard this morning about the opportunities and benefits for this island of enhanced engagement with Irish citizens around the world and making sure that they remain fully involved in what is happening here.

In terms of the Good Friday Agreement, at the risk of boring everyone to tears this afternoon and repeating myself, I think it is a great question, my own sense is that I am quite concerned about where a future British Government might be going in relation to some of the issues mooted in the opening statement. The language of Brexit and the approach that has been adopted, the fractious and febrile nature of politics, the hostile environment that has been created towards rights and equality issues cause me a lot of concern as a person who works in the area of human rights law and has done for a long time. Who knows what will happen in the election, but where a future British Government might be going could be a very troubling place in relation to the protection of human rights and equality. The Good Friday Agreement has a number of commitments in that regard. Much of what we are hearing conflicts with the values that underpin that document, but I still firmly believe that the answer does ultimately rest in getting back to that document and to the things that were noted there, the things that were promised there and the guarantees that are there and ensuring they are implemented.

Members will not be surprised to learn that one consequence of all that, based on the report I have compiled, is that there are people who are at this point and who are not unreasonably pondering the constitutional future of the North in light of the picture that is emerging. It seems to me that it would be remarkable if people were not doing so at the moment because we are in troubling times. Everything I have said has been around de-escalating those conversations, highlighting problems but also highlighting solutions, de-dramatising the conversation and underlining the importance of a human rights framework. I am deeply worried about the impact on the Good Friday Agreement, its institutions and its values in terms of what is being planned and what might emerge from a future British Government. Let me be clear: none of the members are in any doubt that the Conservative Party is clear on where it wants to go in the future relationship with the European Union. In Scotland and in other parts of the UK, people are asking themselves hard questions. One of the questions they are asking relates to whether other people want to go there as well.

Deputy Brendan Smith: I welcome Professor Harvey’s contribution. The issues he has put before the committee are those that need amplification. There must be a greater awareness of some of the issues that have not been implemented that were critical and essential parts of the Good Friday Agreement. We need a better public discussion and public debate on that.

With regard to the extension of the electoral franchise, it is quite ironic that as Professor Harvey made his presentation as a debate was taking place in the Dáil on a 2018 report from the implementation group on Seanad reform. We are not very quick to bring about electoral

reform in this State. It is not an issue that gains a lot of urgency. My predecessor as a Fianna Fáil Deputy in Cavan-Monaghan was the late Tánaiste, John Wilson. As Minister for Education he sponsored a referendum in July 1979 to extend the university franchise to the graduates of the then National Institute for Higher Education, Dublin and the National Institute for Higher Education, Limerick, now Dublin City University and the University of Limerick. The referendum was passed to enable the extension of the university franchise to those colleges in addition to Trinity College and the constituent colleges of the National University of Ireland but the necessary legislation and regulations have never been implemented. During that period, the Oireachtas has failed to implement even that small measure of electoral reform. That is disappointing. I would never be one to believe that electoral reform will happen quickly.

The Taoiseach was asked about the referendum at the Féile an Phobail leaders' debate in which I participated in Belfast last August. He indicated that the referendum would be proceeding. That particular issue came before the Joint Committee on Foreign Affairs and Trade, and Defence for pre-legislative scrutiny. As a committee, we deemed the pre-legislative scrutiny unnecessary in order to ensure that the necessary legislation could be enacted very quickly. To my memory, that was last July but nothing has happened in the meantime. As Deputy Breathnach said, the proposed referendum date has not been adhered to. That is disappointing. In instance the small measure of Seanad reform that was envisaged in 1979, provided for in a referendum and has not yet been implemented.

In all the discussions we have had at this committee and at the Joint Committee on Foreign Affairs and Trade, and Defence, one of the issues that colleagues and I have put forward is that, in any Brexit negotiations, there must be no diminution in any way of the workings of the Good Friday Agreement or, indeed, in the potential of the agreement. Bertie Ahern stated in the late 1990s that the Good Friday Agreement was not just about the absence of violence, although I am not in any way diminishing the importance of the end of violence on our island. Bertie Ahern, Tony Blair, George Mitchell and the party leaders who were all signatories to that agreement emphasised that a lot of work would have to be done to ensure that it was implemented. The work was not done when the agreement was put in place. The clear message was that the Governments and political parties would have to work hard to ensure that all aspects of the agreement would be implemented to the benefit of all the people on this island. Unfortunately, that has not happened.

My understanding, and please correct me if I am wrong, is that the bill of rights would have been a matter of responsibility for the British Government and, unfortunately, it has not been implemented. Does Professor Harvey believe that the absence of the Northern Ireland Executive and the assembly leaves a leadership role vacant? Is there a huge lacuna or vacuum there in driving forward issues that are of critical importance to the people of Northern Ireland and elsewhere on the island? There is a huge onus on the two Governments and the political parties in Stormont, particularly in the context of the Executive and the assembly, to ensure that they are working to implement the mandate that was given to all of us through the referenda, North and South, in May 1998 when the Good Friday Agreement was overwhelmingly endorsed. The political mandate that has been given to all of us, North and South, is not being implemented at the moment, unfortunately. Our society is worse off for that.

Professor Harvey mentioned a near permanent close relationship for Northern Ireland with the European Union post Brexit. I sincerely hope he is right in that view because Brexit is going to happen even if we would prefer that it did not. The withdrawal agreement that is there now is a lesser agreement, from an Irish point of view, than the one reached between the EU and for-

mer Prime Minister May. There is a lack of clarity about what will happen after Britain leaves the European Union. The Secretary of State for Exiting the European Union, when asked in the immediate aftermath of Mr. Johnson getting agreement with the European Union, indicated that there would be no paperwork needed for customs regulations on products moving between Britain and Northern Ireland. He corrected that half an hour later and said documentation and determinations would be needed.

I remember reading a quote from a former Permanent Secretary of the British Department for Exiting the European Union. He indicated that customs regulations would pose particular difficulties and that the matter is not straightforward. He used a phrase that one might associate with my part of the country, the south of Ulster, more than with the City of London. He said the customs regulations would be ferociously complicated. That was not indicating that things would be simple or there would be easy arrangements to put in place. We sincerely hope that is not correct because we all understand that the best possible relationship between Britain and the European Union is essential for the good of our country. We want to try and minimise obstacles to trade and to us going about our everyday living.

It is welcome that the professor has highlighted the issues that need to be progressed. A wider public debate on these important subjects is essential. There is an absolute need to implement those outstanding elements of the Good Friday Agreement that have not yet been implemented for the benefit of the people.

Professor Colin Harvey: I welcome the fact that we have the Bill and the Referendum Commission, although I am conscious of the glacial pace of change. The Convention on the Constitution vote in favour of voting extension was in 2013 and it is now 2019. I do, in a sense, commend the Government on taking this step but I encourage it to take the next one. We need a date for the referendum and a commitment to taking this forward. It is also welcome that there is an indication that the Government is committed to the more inclusive option on this as well. We need to move to the next step on that now.

The theme for my next answers is Brexit. Ireland is co-guarantor of the agreement and the co-guarantors have responsibilities. We all know that Brexit has severely damaged relationships that will need to be rebuilt because the agreement will not work without robust British-Irish co-operation underpinning it. That co-operation has been damaged by Brexit. The Irish Government has a strong role in advancing many of the issues I have raised today in the context of those conversations. Although we have mentioned the Executive, there is also the British-Irish Intergovernmental Conference. The latter needs a reboot. It needs to become a much more robust institution than it is at present. It could be a vital forum in the future in the context of the matters we are discussing now.

The bill of rights rests with the British Government. It is absolutely clear in the agreement that this should have been done by means of Westminster legislation but that has not happened. There is an obligation on the British Government to take this forward. It has proposals and there is a need to advance this debate. It joins a list of issues which I am going to link together in answering the question on the Executive posed by Deputy Brendan Smith. The difficulty is that the issues I have identified are causing the problems that we see in the institutions. There is a sense in the work that I have done and continue to do with civil society organisations and others that, by 2016, people had had enough of the rights and equality commitments of the agreement not being delivered. If we are able to address some of the things we have talked about here today, then there will be political institutions that can function on a sustainable basis in the longer term. Without the underpinning human rights and equality that was anticipated

in the agreement, there is a rights and equality crisis in Northern Ireland that really needs to be addressed.

It is not just about getting institutions up and running, it is also about institutions getting up and running on the right basis in order that they do not collapse again after 12 months. We need to address some of the rights and equality challenges. Essentially the withdrawal agreement and the protocol were entirely predictable given the British Government's negotiating positions and red lines, and the agreed objectives on a hard border, the agreement and North-South co-operation. The protocol that has emerged was entirely legally predictable and has undergone a number of variations. It has been transformed from a backstop that was essentially temporary unless and until a more permanent arrangement was in place.

We need to be clear that we are in this position because of the British Government's approach to these negotiations. I do not need to tell this committee that the North does not want to leave the European Union. It voted to remain and that has been confirmed. As the softer versions of Brexit for the UK as a whole have been largely ruled out by the British Government, in order to protect the things that were agreed in the joint report of December 2017 we were always going to need a legally operable special arrangement. Nobody involved in the negotiations and nobody following those negotiations closely should be surprised that is where we have eventually end up.

I underline the point that the majority of people in Northern Ireland do not want to be in this conversation at all; they do not want to leave the EU. However, in the event of leaving, the protocol is a rather predictable legal measure that has been transformed. It reflects the need for special arrangements to do the things that people wanted to do based on the red lines the British Government has had throughout the entire process. Ultimately, it is an exercise in legally limiting damage to protect some of the things we are discussing right now.

No diminution has found a place in the protocol. It is interesting that the protocol refers to the need for no diminution in issues of rights and equality. I realise that there is much highly politicised comment on that protocol at the moment. I underline the point that the special arrangement that has emerged in that protocol was an entirely predictable outcome of the shared negotiating objectives and the red lines the British Government set down for the discussions.

Chairman: Professor Harvey spoke about parity of esteem, equality and so on. As part of the narrative, people have concerns that somehow they will lose something as a result of other people getting rights. There is this idea of equivalence, that if the other community gets something, we need to get something in these negotiations. When we consider educational underachievement, there is a sense that if one school is being closed down, another school needs to be closed down. In addressing poverty, the focus is not on areas with the most poverty, but that we have to share investment with other areas. Does Professor Harvey, with his human rights background, come across that challenge?

Today's focus was supposed to be on voting rights in presidential elections. We have not even had the referendum and I am thinking ahead. What message would it send if the people voted to reject that amendment? What impact would it have on the Irish diaspora and particularly on those living in the North of Ireland?

Professor Colin Harvey: The North has felt the absence of a comprehensive rights framework as anticipated in the Good Friday Agreement. Although we have the Human Rights Act, the agreement anticipated something more. The Northern Ireland Human Rights Commission

provided advice in that regard. The answer is really very simple. It is often a source of frustration working in the area of human rights law. The clue to human rights is in the title. They are not rights that attach to a citizenship or an identity; they are rights that belong to everyone in society. The comprehensive human rights framework envisaged by the bill of rights proposals do not belong to any one community or political party; they belong to everyone.

As the Chairman rightly said, there is often a challenge in that message being heard. Our society has felt the loss of that comprehensive human rights framework. It would have made a difference and solved some, but not all, of our challenges. I would like to highlight one at the moment. I am very concerned about the social and economic impact of Brexit in the region where I live. It will have a devastating effect on some of the most marginalised and vulnerable communities in our society. Communities that have not really felt any peace dividend will suffer even more as a result of all of this. The proposals on a bill of rights included provision for social and economic rights. I am concerned that social and economic rights, the bread-and-butter rights issues that people can relate to, are still second-class human rights and that needs to be addressed. That is why we need to get back to thinking about the comprehensive human rights framework the agreement anticipated.

If we get a date for a referendum and if that referendum is lost, the impact on Irish citizens who do not live in the State will be devastating. It is the least that could be done for Irish citizens living in the North of this island or elsewhere and would recognise that citizenship has some tangible meaning. It is a rather modest specific reform in one particular election - the election for President. If that referendum was lost, it would have a very damaging impact on how this State interacts with Irish citizens in the North and elsewhere in the future. It would have a personal impact.

I have tried to emphasise today that this is about the human stories, the historical experience, the complex history of this island, of families, relations and friends elsewhere. The rejection of that would send a signal and would be potentially devastating to Irish citizens who live elsewhere. The electorate in this part of the island is more generous than that. I would put my faith in our ability to work through some of the concerns and anxieties people have, deal with some of the myths and provide the evidence, and underline that this is a rather reasonable, justifiable and proportionate change. Many other states around the world do this successfully and this State also has the capacity to do that.

Chairman: On that positive note, I bring the meeting to a close.

The joint committee adjourned at 3.49 p.m. until 2.15 p.m. on Thursday, 21 November 2019.