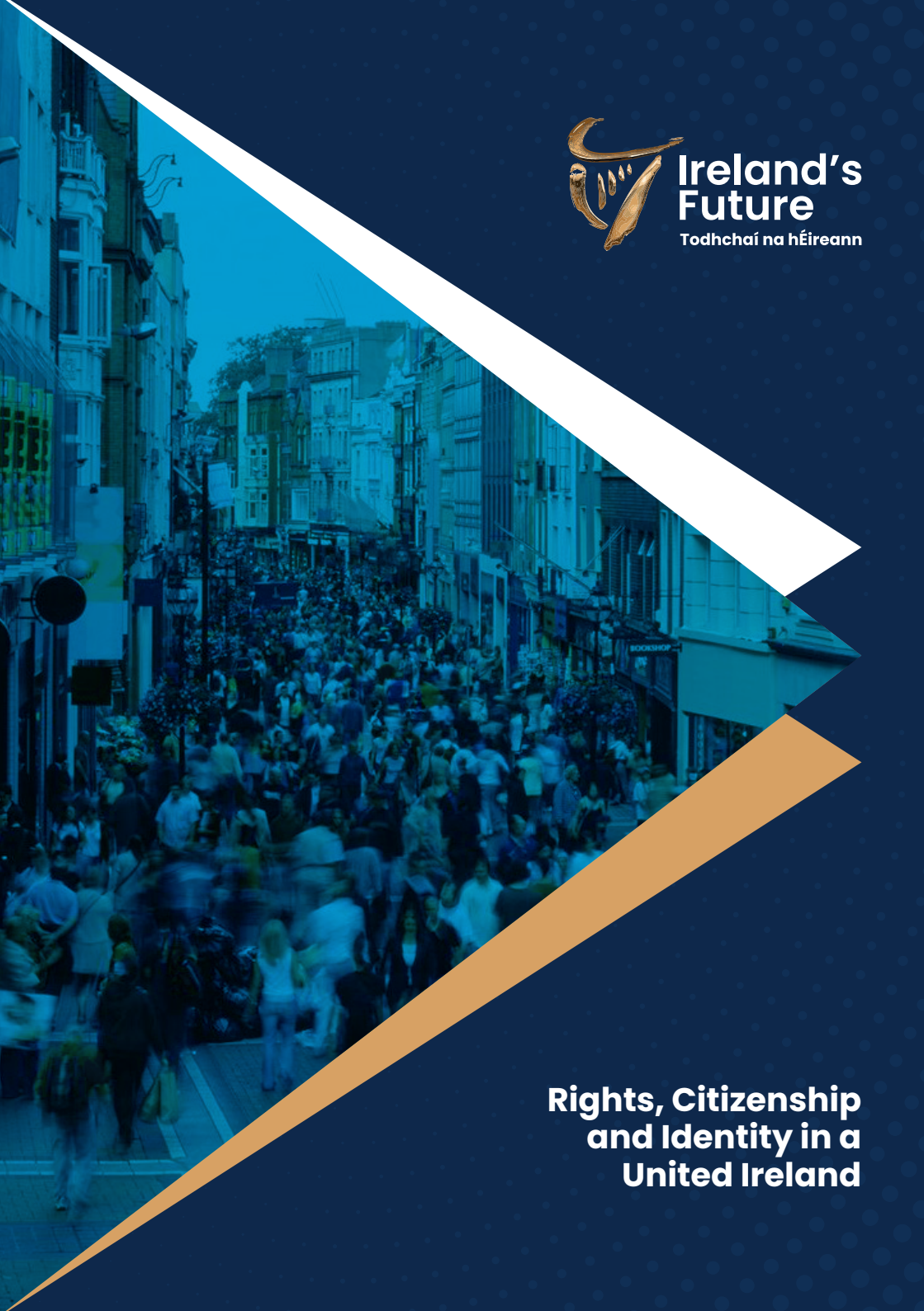




**Ireland's
Future**

Todhchaí na hÉireann



**Rights, Citizenship
and Identity in a
United Ireland**



Introduction

The debate on the constitutional future of Ireland is intensifying. It is heartening to observe the number of new initiatives and the contributions that have been produced thus far. This is necessary work, and there are collective ongoing efforts examining a wide range of questions that must be addressed before concurrent referendums take place on the island of Ireland. Ireland's Future welcomes the gathering momentum and continues to encourage widespread deliberation on all options and perspectives. In the coming months, Ireland's Future will publish new discussion documents examining the areas of Health and Education in a United Ireland.

From the outset, it is important to acknowledge the value of every culture and identity, old and new, that shares the island of Ireland. This discussion document complements our previous three publications and represents a contribution to ensure that every identity and culture is safeguarded, protected and cherished in a new and united Ireland.

One of the matters requiring attention is how rights, identity and citizenship are located in these debates, and how they will shape the process and future arrangements. There is understandable concern about the implications of constitutional change in these areas. The Good Friday Agreement, and subsequent agreements, led to the creation of institutions on this island, and across these islands, reflecting the totality of relationships. But the values and obligations contained in the Agreement, and what they mean for a united Ireland, are often neglected. There are significant guarantees that speak to the present and the future of the island. Any discussion of planning and preparation for a united Ireland that claims to be 'Agreement compliant' must ensure that proper account is taken of the obligations and requirements that are already there. In particular, we believe that the Agreement offers a foundational pillar that can usefully guide reflection and dialogue, understood also in the context of relevant international and domestic legal obligations.

The aim of this briefing paper is to raise questions and provide answers. There is no attempt here to offer a comprehensive analysis of all existing legal guarantees and obligations and the consequences. Instead, the focus is on drawing out key legal and policy themes, clarifying challenges that will need to be resolved and therefore assisting those undertaking preparatory work. Our objective is to assist civic and political dialogue.

Our approach is deliberate. Ireland's Future is committed to supporting wide and deep civic and political engagement around constitutional change. That is why

we have called for the creation of an all-island Citizens' Assembly, and why we are cautious about pre-empting those vital civic and political conversations. Our intention is to set out how we believe these discussions must be framed.

However, we recognise the need to be clear on the parameters and available options, if the values and principles that inform the peace process are to be respected. This must be a creative and imaginative debate about a new and united Ireland, but it must also acknowledge that there are vital guarantees that should be respected. Underpinning our approach is not merely the desire to ensure 'no diminution' in available protections, but to achieve a new and united Ireland that is a substantively better place for everyone who shares the island in the future. That will simply not happen if matters of human rights, equality, identity and citizenship are neglected in the preparatory phase. This paper is a contribution to that discussion.

There are three central messages: first, more attention needs to be paid to those obligations, principles and values that will frame all aspects of this process and what they require; second, Ireland's Future joins with many others in seeking a new and united Ireland that is ambitious and world-leading in its commitment to human rights and equality. We are convinced that this is one way to help build a collective movement for constitutional change in Ireland; and third, Ireland's Future will work with others to ensure that promises made, and the assurances that are there, are respected and upheld before, during and after the managed transition in Ireland. We urge those concerned about the protection and promotion of human rights on this island to join the debate and to engage in this vital planning phase.

Gerry Carlile
Ireland's Future CEO



1. What is the context for considering Rights, Citizenship and Identity?

Ireland's Future advocates for constitutional change because everyone on this island will benefit from new arrangements. We remain determined to ensure that the constitutional conversation is rights-based, with a focus on building a society that has tangibly learned the lessons of history. There is no desire to repeat the mistakes of the past, and one way this outcome can be achieved is to place the promotion and protection of human rights at the core of the discussions.

The first thing to note is that there are agreements governing how the North is expected to operate now, within the context of a wider set of institutional relationships across these islands. This is a post-conflict society with an overarching peace/political agreement that will frame future constitutional conversations. Ireland's Future, along with others, agrees that the values, principles and obligations of the Agreement must structure the debate. This is not the time to begin unpicking or rewriting what has been promised and agreed. What is apparent is that those who crafted the Agreement provided for, and anticipated, the prospect of constitutional change. Many of the core themes were evident throughout the peace process. The status of the Agreement, as both a multi-party political agreement and binding international treaty, takes on additional significance in this context. This is about political dialogue and respect for the rule of law, including international law. Both governments are bound by their existing obligations and must deliver processes and outcomes that are sustainable and compliant with established guarantees.

There is an extensive body of international standards that address human rights. Ireland and the UK are bound, as a matter of international law, by international human rights law commitments, and other relevant obligations that apply in the context of an agreed transfer of territory/sovereignty. Both states are obliged to respect, protect and fulfil civil, political, economic, social and cultural rights. There will be a firm expectation – in line with international practice – of continuity of human rights protections in the event of constitutional change, Ireland's international obligations will become applicable to the territory of 'Northern Ireland', which will also return fully to the EU.

There are standards that apply to everyone within the jurisdiction of the state, and instruments that speak to particular thematic areas. For example, both states have ratified the International Covenant on Civil and Political Rights 1966, the International Covenant on Economic, Social and Cultural Rights 1966, as well as the

Convention on the Elimination of All Forms of Discrimination Against Women 1979, and the Convention on the Elimination of All Forms of Racial Discrimination 1965. At the European regional level (Council of Europe), both are, for example, parties to the European Convention on Human Rights 1950 and the Framework Convention for the Protection of National Minorities 1995. Recall also that Ireland remains a member of the EU (with the obligations that follow) and the UK is in a new post-Brexit relationship with the EU based on binding international agreements.

The international human rights regime is not merely confined to legal standards. There are also international institutions tasked with monitoring compliance and supervising how the rules are implemented domestically. The UK has historically been less keen than Ireland on, for example, subjecting itself to the individual complaints mechanisms within the UN human rights system. Perhaps the best-known example of international supervision is the work of the European Court of Human Rights. There are many other examples, but the basic point is that there is an international framework of protection that will apply during the process and in the event of constitutional change in Ireland. Both states will have to account for how they are upholding these standards before and after any transition and guarantee that no gaps emerge in the process of transfer of sovereignty (this should include, for example, an audit of ratification of relevant instruments and a rigorous human rights assessment of comparative performance and compliance). International input into, and oversight of, this aspect of the process may be valuable, in addition to any bilateral accountability mechanisms put in place. The British-Irish Intergovernmental Conference will offer a forum for discussion and for monitoring progress. The Irish Human Rights and Equality Commission could be given a leading role, for example, in assessing the adequacy of the implementation of relevant commitments, with concrete legal remedies agreed and available if problems do arise for individuals.

When reflecting on adequate preparation for constitutional change, there is an international context and a need to ensure that whatever emerges is fully informed by existing obligations. This presents an opportunity for considering how a new and united Ireland will do better on human rights protection and promotion in the future, particularly with respect to domestic implementation and enforcement. Much will depend on the form that reunification takes, but there is considerable merit in incorporating the rights discussed in this paper at the constitutional level in a united Ireland.

There is an added complication that may seem legalistic but is of crucial significance in practical terms. Ireland and the UK are 'dualist states' for international law

purposes, and have distinctive constitutional arrangements that will govern how the referendum processes and any transition are handled. 'Dualism' means that direct reliance on those international standards will depend on whether they have been incorporated or given effect in domestic law. There are exceptions, but both states have tended to avoid direct incorporation of these international instruments. That is why, for example, the Human Rights Act 1998 is so important in the UK; it gives further effect to aspects of the ECHR in domestic law (as, for example, the European Convention on Human Rights Act 2003 does at the sub-constitutional level in Ireland). And as is well known the Agreement requires incorporation of the ECHR in Northern Ireland. This remains significant because other important elements of the Agreement have not been accorded this domestic status, thus raising practical concerns about implementation and enforcement. A number of current debates on citizenship and identity pivot around this absence of domestic incorporation and the limits of legal enforcement.

Ireland has a codified constitution (Bunreacht na hÉireann) – that has been amended by referendum on many occasions – and contains rights provisions. There is ongoing discussion about further reform of the Irish constitution, including in the area of socio-economic rights. The UK does not have a single codified constitution; instead, its arrangements are based on a set of fundamental principles, the most significant of which, for practical purposes, remains the legislative supremacy of the Westminster Parliament. One implication is, for example, as a strict matter of domestic constitutional law, Parliament could in principle opt to depart from promises made by any British government in negotiations with any Irish government (even in circumstances where that would place the state in breach of its international legal obligations). It also continues to limit the practical utility of international obligations that have not been given domestic legal effect. This general constitutional legal position makes negotiating with a British government challenging, because it cannot legally guarantee in domestic law that a future Parliament will take the same view. As noted below, this may become especially concerning for British citizens in Northern Ireland who will be relying on the British state to uphold Agreement obligations into the future. Political reality can often make such speculation seem irrelevant, but recent experience suggests it is a matter to be mindful of as the debate on constitutional change builds. It strongly suggests that any future British-Irish Agreement dealing with the transfer of sovereignty must give more focused thought to practical legal enforcement than is evident in the current Agreement and in the way that it has been interpreted and applied in the UK.

The work of the Irish state in taking forward preparations will also be constrained and shaped by the current Irish constitution and other legal obligations. For example, without further amendment the voting arrangements North and South for the 'concurrent referendums' provided for in the Agreement will differ. The right of self-determination belongs to 'the people', but how will that term be defined for the purposes of these referendums? How will people regard a differential approach to voting rights in the context of simultaneous referendums? Should reform to the rules on voting rights be changed prior to the referendums, including voting age?

There is also a live debate as to the meaning of reunification itself. Should it involve substantial amendment of the existing Irish constitution, or will it lead to the adoption of a new constitution? For the purposes of this paper the focus is not so much on what form this takes, but what the substantive guarantees are and how they are practically implemented. It is, however, essential that core protections in the areas under consideration here are located at the constitutional level.

A final context to remember is comparative experience. Many states around the world have managed transitions, and there is much international experience. Examples include the reunification of Germany, the process of transition in South Africa, and the dissolution of Czechoslovakia. There are also clear lessons to be learned from the experience of the dissolution of the former Yugoslavia and, for example, the transfer of sovereignty over Hong Kong. While it would be unwise to doubt the real challenges involved, there is a habit in Ireland of overplaying the difficulties, in what appears to be an attempt to avoid doing the required planning. This will, in itself, make the chances of a problematic transition more, not less, likely. When considering questions of rights, identity and citizenship it will be of value to draw on relevant comparisons. For example, South Africa adopted a new constitution that includes a Bill of Rights. What lessons can be learned here from the experience of South Africa? Those advocating change will want to pay attention to comparative experiences that may be of particular relevance and value in influencing what takes place in Ireland. It will be essential that lessons are learned from mistakes made elsewhere as well as examples of best international practice.

When thinking about context, it is vital that international obligations and comparative experience are respected and taken fully into account in discussions about a new and united Ireland. Part of this is because both states are, of course, bound by their international legal obligations, but also because any process of constitutional change will be better if it is guided by a contextually sensitive awareness of these international commitments and by the lessons learned from elsewhere. This applies both to the process preceding the 'concurrent referendums' and what

emerges afterwards. For example, if there is a new constitution for a united Ireland, will it contain a modern Bill of Rights? If so, what will the content be, and will the drafting process respect the values the document itself should aspire to? Who will draft it? Would this happen before or after referendums? If the focus is on advance planning just how much detail will be available?

2. Why is the Good Friday Agreement so significant?

The right of self-determination/principle of consent is included in the Agreement. The process that will lead to a new and united Ireland thus derives from a multi-party agreement and a binding bilateral British-Irish treaty. What was agreed was endorsed overwhelmingly on the island of Ireland. There is recognition in the legal orders of both states (Northern Ireland Act 1998 and Bunreacht na hÉireann), but there has not been complete domestic incorporation or implementation. In reality everything that happens with respect to this process will be assessed with reference to Agreement compliance, and a plausible connection will need to be made for any propositions advanced. While it is hoped that the planning stage will see intergovernmental agreement, in particular, there remains the challenge of what happens when there is disagreement over what the Agreement requires and how this is resolved. This will arise sharply in circumstances where domestic legal effect is absent. In reality these questions will be resolved in existing political and legal arenas unless an additional form of international oversight is put in place. It would be wise to attend to matters of dispute resolution at an early stage.

One of the mainstream features of the Agreement is the attempt to address matters of rights, identity and citizenship in a credible way. The provisions deal with the current arrangements but also address the future as well. Protections around rights and identity are therefore already present, and were prefigured in many of the landmark documents of the peace process.

There are varying views on whether all aspects of the Agreement should be mapped onto the future arrangements. Some suggest that virtually everything will (and should) form part of a united Ireland, others are less sure, particularly as this process of constitutional change will be framed by a further British-Irish Agreement, or agreements, that will likely amend the existing Agreement. It is notable in this context that the British-Irish Agreement 1998 replaced the Anglo-Irish Agreement 1985.¹ Domestic legislation will be required to give effect to what has been agreed, and lessons can be learned from past experience in Ireland. What is clear, however, is that there are relevant guarantees that are explicitly forward facing, should be respected (whatever is agreed and endorsed institutionally) and these merit further examination.

¹ Article 3 (1): 'This Agreement shall replace the Agreement between the British and Irish Governments done at Hillsborough on 15th November 1985 which shall cease to have effect on entry into force of this Agreement.'

3. What are the relevant Agreement guarantees?

First, there is an overarching commitment in the Agreement to the 'protection and vindication of the human rights of all' and human rights flow throughout the document. That is unsurprising, as it was assumed that any agreement that stood a chance of success would have to address matters of rights and equality.

The 'rigorous impartiality' obligation (see below) includes 'full respect for, and equality of, civil, political, social and cultural rights' and is plainly future facing. However, experience in the North has shown that in the absence of domestic implementation these principles often lack critical bite when needed most, and the record of the British government is a poor one.

Human rights are hardwired into the safeguards around the Assembly, the British government agreed to incorporate the ECHR 'into Northern Ireland law', new Commissions were established North and South (including a Joint Committee to foster cooperation and consider a Charter of Rights for the island), and the Irish government agreed to 'take steps to further strengthen the protection of human rights in its jurisdiction' to 'ensure at least an equivalent level of protection ... as will pertain in Northern Ireland'. The Agreement also resulted in a Bill of Rights process that led to the submission of advice by the NI Human Rights Commission to the British government in December 2008.² It was never enacted, and debate continues. But it highlights a theme that has emerged since the Agreement was endorsed: the human rights and equality potential has never been fully realised in the here and now. There is good reason to pay close attention to this experience and to learn the lessons for any future constitutional change process. Human rights reforms should not be left so open ended.

Second, the focus on parity of esteem and equality of treatment is significant. The Agreement already addresses concerns raised about British identity/citizenship; a fact often neglected in the current discussions. If you base the constitutional status of a jurisdiction on the 'principle of consent' it is unsurprising that the founding document would contemplate what might happen if this changes. There are elements of the Agreement that are unequivocally future oriented with respect to

² For further information: <https://nihrc.org/publication/category/bill-of-rights>. See also, Colin Harvey & Anne Smith, 'Designing Bills of Rights in Contested Contexts: Reflections on the Northern Ireland Experience' (2020) 44 *Fordham International Law Journal* 357.

identity/citizenship. It is worth highlighting them here. The 'rigorous impartiality' obligation merits quotation in full. Both governments:

Affirm that whatever choice is freely exercised by a majority of the people of Northern Ireland, the power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos, and aspirations of both communities[.]³

This provision applies now to the British government (although it has never been explicitly incorporated into domestic law), and in the event of reunification will apply to the Irish government. How will this guarantee be respected in domestic law, policy and practice in a united Ireland? Is it sufficiently precise to be expressly legislated for? And, if so, at what level?

The obligation is founded on principles that include 'full respect' for parity of esteem and equality treatment and must be respected in any future arrangements. That discussion is likely to be informed by the interpretation and approach by the British government now (it is striking how much of this aspect of the Agreement that has never been domestically incorporated), but that need not necessarily be the approach adopted by a future Irish government. Past experience in the North demonstrates that these obligations are often practically meaningless if not given domestic legal effect.

An intriguing question that must be answered therefore is: what will parity of esteem and 'just and equal treatment for the identity, ethos and aspirations of both communities' require of a united Ireland? In reaching for an answer, will the present approach of the British government function as a guide? As should be clear from our arguments and our overall approach, Ireland's Future believes that the Agreement should frame this conversation. We also believe that the proposals should be informed by wide and deep civic engagement and dialogue. How a united Ireland should discharge these obligations is a matter of ongoing debate, but we believe that should be shaped by what has been already promised, as well

³ Article 1(v).

as what is most likely to make the transition to a united Ireland successful. This should be approached in a spirit of inclusion, generosity and imagination, but as made clear in this paper there are existing guarantees that speak directly to these questions.

The birth right commitment in the Agreement seems relatively clear but remains a source of contestation. Both governments:

Recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland.⁴

Both states have therefore undertaken a binding international commitment to the 'people of Northern Ireland' with respect to identity/citizenship in perpetuity.⁵ Obviously, the Irish government cannot grant British citizenship, so this is a matter that will fall to the Westminster Parliament and future British governments to uphold (that those born in the territory of a united Ireland will retain a right to British citizenship). In a united Ireland this will raise questions about what 'Northern Ireland' means, and the practical implications of the obligation. For these express purposes it suggests that the entity will remain jurisdictionally present in some form, but this will depend on the model of reunification selected, and it may take on historical significance for bureaucratic purposes if that is the decision reached.

There are also challenging questions – caused by Brexit – for the protection of those who wish to identify as 'British only' (and therefore not as Irish/EU citizens) in a united Ireland. This links to the earlier discussion about the problematic approach of the British government to this obligation and its interpretation and application now. It suggests that in any process of constitutional change both states should leave no room for doubt around such fundamental questions of identity/citizenship and the intended domestic legal effect of these promises should be clarified.

4 Article 1(vi).

5 The term 'people of Northern Ireland' is explicitly defined in the British-Irish Agreement for these purposes: 'The British and Irish Governments declare that it is their joint understanding that the term 'the people of Northern Ireland' in paragraph (vi) of Article 1 of this Agreement means, for the purposes of giving effect to this provision, all persons born in Northern Ireland and having, at the time of their birth, at least one parent who is a British citizen, an Irish citizen or is otherwise entitled to reside in Northern Ireland without any restriction on their period of residence.'

What this highlights is that there are complex questions of citizenship and nationality to be discussed and resolved in advance of the referendums to ensure that people have clarity and certainty on the consequences. It is also essential, for example, that no one is rendered stateless as a result of the approach adopted, and that a human rights-based approach ensures that the impact on everyone features strongly in the constitutional conversation.

Third, it has already been noted that, for example, Ireland is party to a wide range of international human rights obligations, in addition to those deriving from domestic law and EU membership. These will become applicable to the territory of 'Northern Ireland' as well. The Agreement also includes the concept of 'equivalence', which means that 'at least an equivalent level of protection of human rights' must be available in Ireland, so reunification is anticipated, and international commitments acknowledged. In this context, it is worth noting that neither the Bill of Rights nor the Charter of Rights for the island have ever been enacted, despite advice having been submitted on both. For the purpose of historical context only, it is perhaps noteworthy that in the Joint Framework Documents 1995 (that preceded the 1998 Agreement) the following is stated about the Charter/Covenant:

This Charter or Covenant might also contain a commitment to the principle of consent in the relationships between the two traditions in Ireland. *It could incorporate also an enduring commitment on behalf of all the people of the island to guarantee and protect the rights, interests, ethos and dignity of the unionist community in any all-Ireland framework that might be developed with consent in the future*, to at least the same extent as provided for the nationalist community in the context of Northern Ireland under the structures and provisions of the new Agreement. (Emphasis added)

That suggests that the envisaged Charter/Covenant was intended to provide reassurance to unionists in the event of a united Ireland, and connects directly to the notion of 'equivalence'. It therefore remains unfortunate that this all-island Charter has never been adopted.

The absence of the Bill of Rights and Charter raises intriguing questions about the future. But one point seems obvious: there is a formidable strategic rationale for those worried about the constitutional future to re-engage with these debates and proposals in the here and now. Although the concept has an element of ambiguity,

the equivalence model adopted will be informed by the standards of protection available in the North, and the corollary of this is that any gains made should in principle transfer into the new arrangements. There is also an incentive for those seeking reunification to advance this task in the present to demonstrate that change will bring substantial human rights and equality benefits.

At minimum there should therefore be no detrimental rights-based impact of Irish reunification both at the level of standards and also with respect to their practical implementation. It is hoped that the debate will stretch well beyond these parameters and be suitably ambitious. But at minimum no one should be worse off in rights terms as a result of reunification. Those committed to reunification must ensure that this is the case. But the desire for a new and united Ireland strongly suggests that any referendum campaign will move well beyond this minimalist baseline.

Whatever constitutional and administrative model is adopted there must be explicit legislative arrangements underpinning the substantive guarantees. These must ensure there are robust safeguards for all communities making the transition to a united Ireland. Standards themselves will not suffice; practical implementation and enforcement will be essential. The clear lesson of history is that bilateral British-Irish agreements only gain real value if they are sufficiently precise and relevant protections are given meaningful domestic legal effect.

What is often missing from the present constitutional conversation is a recognition of just how constrained (in a good way) these discussions will be, particularly if there is to be respect for the Agreement and other relevant obligations. It remains vital, however, to insist and recall that these are merely a floor, the starting point, and proposals for a new and united Ireland can go much further. But it should be reassuring to those anxious about the possible implications of change to remember that there are robust guarantees in place on which to rely and build.

4. How do these obligations impact on the conversation about a united Ireland?

The frequent references to a new and united Ireland suggest that many are engaged in the debate because of a well-founded desire to achieve significant change across the island. As indicated, existing guarantees will set the parameters of the discussion in a positive sense. Why? Because they capture much of what many envisage a new Ireland to be. A place that upholds the values of the Agreement and that celebrates human rights and mutual respect. But what the record thus far shows, and what must be taken into account in any transition, is that implementation and enforcement can be problematic. Those who want a genuinely new Ireland must be vigilant throughout these processes to ensure promises are grounded in hard legal reality and are not left in the realm of the merely aspirational.

What precisely might this mean for a united Ireland? Here we recognise that there are different views on the most appropriate constitutional model. The debate can be classified as moving between a relative continuity position to much more transformative change. There are advocates of a variety of unitary options (from centralised to something like 'devo-max') and those who propose explicitly federal or confederal models. Ireland's Future encourages dialogue on the merits of the various approaches, as well as a factually informed appraisal of what is possible. For example, 'Northern Ireland' is not a 'state', so any federal/confederal proposals would need to clarify what precisely is intended and what the relevant units would be. A starting point here is that whatever the mechanisms of unity, the substantive guarantees noted in this paper will need to be respected and they do not necessarily dictate one possible model for a united Ireland.

As noted, much about the practical functioning of a united Ireland will depend on what happens institutionally. If the Agreement is carried forward largely unamended in institutional form, then the power-sharing arrangements would continue alongside other relevant reforms (either through constitutional amendment or replacement). This 'continuity' model would mean that a united Ireland would not depart radically from what exists now, with power-sharing retained in the North and Irish law, policy and practice reformed to accommodate the new arrangements. In such a context, for example, the NI Human Rights Commission might continue to function in a united Ireland.

If this approach is not adopted, and a more constitutionally transformative agenda unfolds, then the question will arise: do the guarantees in the existing Agreement or any subsequent agreement require reform to political institutions, for example,

or can parity of esteem and equal treatment be fully respected in other ways? Does the existing Irish electoral system already guarantee a sufficient element of proportionality? If a unitary model is selected does respect for these values require the reconfiguration of the Irish governmental system? The answer to the above questions will determine how this constitutional conversation proceeds. It is not apparent that power-sharing within a unitary state model would be necessarily required on the basis of existing principles and practice in Ireland, and there is a plausible argument that these values could be respected in other ways. But is that a desirable outcome? The proposals that emerge from civil and political dialogue across the island will need to provide plausible answers to these questions. But as argued throughout this paper, they must at all stages be shaped by a human rights-based approach.

Ireland's Future has noted the potential value of a time frame as an aid to encouraging the required preparation. Our view remains that there should be proper planning and that this will be a responsibly managed transition that takes place over a period of time. That will depend, to some extent, on how much advance work is undertaken. However, from the perspective of rights, identity and citizenship the more appropriate focus (whatever the time frame) is on what is substantively guaranteed at the constitutional and sub-constitutional levels, and what the likely outcomes are for individuals and communities. Any constitutional model eventually adopted for a united Ireland could, for example, accommodate a new Bill of Rights that builds on existing guarantees across the island. A new and united Ireland might provide the perfect moment for a new beginning for human rights and equality on our shared island.

5. What sort of united Ireland do you want?

The purpose of this contribution is to encourage a more extensive debate around the parameters of the conversation about a united Ireland. This paper addresses only some of the relevant questions. The Agreement uses the language of a 'sovereign united Ireland' and that will inform the referendum processes and the question or questions asked. However, it is striking just how many people view this as an opportunity for dialogue on a new Ireland. The term signals an appetite for something different on the island. It is language that can be helpful in bringing diverse new voices to the conversation, particularly those who view the debate as part of a larger transformative agenda for change. It can also re-emphasise the desire not to repeat past mistakes. Equally, a new and united Ireland will provide the opportunity to make the aspirational language of a 'shared island' real. A divided Ireland is not a truly 'shared island'.

If it is to be a new and united Ireland, then many believe the discussion must be shaped from the start by human rights and equality commitments and that protections on identity and citizenships must be legally watertight. The aim here is to highlight the reality that dialogue and debate should be informed by principles, values and standards that are already there in addition to whatever innovations people may seek as part of any transition.

To those who ask what the guarantees for the future are, we suggest paying close attention to the Agreement and to relevant international obligations in particular, and even closer attention to domestic implementation and enforcement. The referendum campaign in the North is likely to involve detailed exploration of what constitutional change will entail, in precise terms. The fact that guarantees are in place will reassure but will be insufficient if not accompanied by relevant substantive and procedural details. That means those campaigning for Irish reunification must have a clear view on the answers, even if part of the response involves a further process that might lead, for example, to the adoption of a new constitution. Ireland's Future believes that an all-island Citizens' Assembly is a step that should be taken now and one that reflects the reality that the right of self-determination belongs not to any political party or the Irish government but to the people of the island.

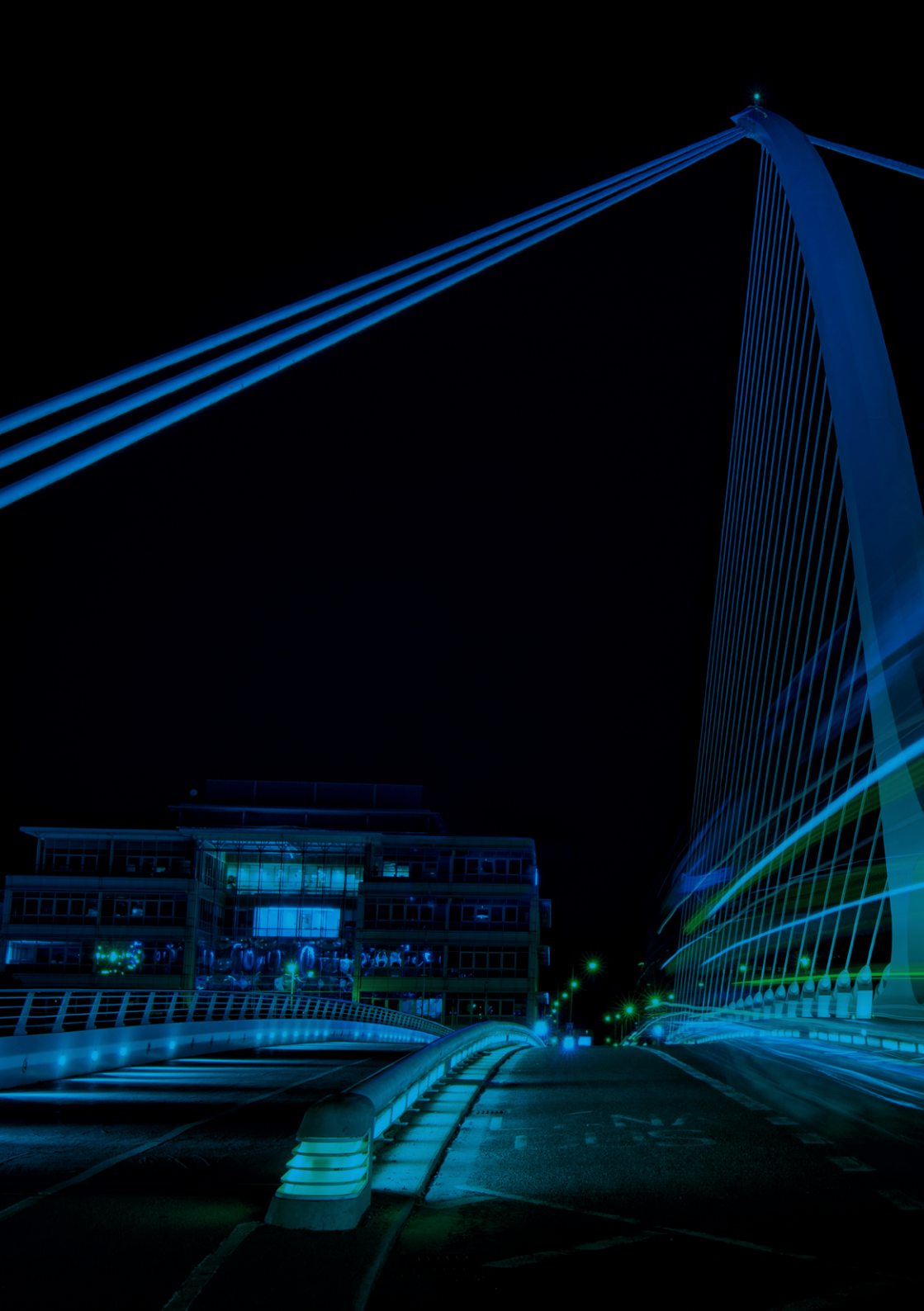
6. Why does this all matter?

Ireland's Future notes that the next phase of the debate on Irish reunification has commenced. The first phase involved successfully moving this discussion from the relative margins to the mainstream of Irish public life. Few can doubt that this is now the case.

The phase that follows will be more challenging. There is a particular onus on those who believe in constitutional change to make a detailed, evidence-based and persuasive case. In doing this an awareness of what has already been promised is essential and also helpful. Too many current discussions about the future of Ireland neglect the obligations and commitments that will shape and inform the process. When reunification takes place Ireland will remain bound by guarantees that derive, for example, from EU membership, existing legal provisions and international standards.

That is not to suggest that the conversation on a new and united Ireland will lack imagination and creativity. It is simply to note that there will be significant and welcome constraints on what is possible, and extensive guidance on what is likely to prove successful. The suggestion is that this will make the result better and more sustainable. The new Ireland that emerges is more likely to be successful if these standards are taken seriously at all stages.

We end by reaffirming our collective commitment to the right of the people of our island to self-determination and call for the urgent and immediate establishment of an all-island Citizens' Assembly to carry this work forward.







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