

**LADY CHIEF JUSTICE OF NORTHERN IRELAND**  
**NORTHERN IRELAND HUMAN RIGHTS COMMISSION**  
**ANNUAL LECTURE 2023**  
**13<sup>TH</sup> SEPTEMBER 2023**  
**OPENING REMARKS**

Good evening.

It is my immense pleasure to be opening the 2023 Human Rights Commission Annual Lecture. This annual lecture, which attracts internationally recognised speakers, plays an important part in promoting human rights in Northern Ireland and so I am honoured to be part of it.

I want to extend my own personal welcome to Dr Gillian Triggs. I am looking forward very much to hearing what Dr Triggs is going to tell us about new thinking on global refugee protection. I am sure her lecture will be exceptionally informative and interesting and above all, will give each of us much food for thought.

When I addressed this annual lecture previously, I spoke about the context in which discussions about human rights in Northern Ireland arises. This is important to reemphasise. I start with a brief remembrance of history.

The Universal Declaration of Human Rights was formulated seventy-five years ago. The subsequent establishment of the Council of Europe in 1949 was part of the Allies' programme to 'reconstruct a durable civilisation'. That was of course a laudable aim but one that proved difficult to achieve in an ever-changing world where conflicts erupted.

Another key historical milestone was in 1959 which saw the signing of the European Convention for the Protection of Human Rights and Fundamental Freedoms by Council of Europe members.

In this jurisdiction, twenty-five years ago, in 1998, we saw the passing of the Human Rights Act and in the same year the signing of the Belfast, or Good Friday Agreement. That Agreement is prefaced upon the European Convention on Human Rights and so the protection of human rights in Northern Ireland continues to frame the rights perspective in Northern Ireland.

The Northern Ireland Human Rights Commission was established as part of the out-workings of the 1998 Agreement. Since its inception, the Commission has played a key role in protecting and promoting the human rights of everyone in Northern Ireland, through education and promotion, including events such as these, through participation in, and support of, legal proceedings and through advice to government.

In the period since the 1998 Agreement, we have seen the development of an increasing rights-based jurisprudence in this jurisdiction. Cases coming before the Northern Ireland courts, the Court of Appeal in particular, regularly feature a human rights dimension.

This evening's theme of refugee protection is timely as the world views scenes of refugees in desperation crossing dangerous seas to reach safety and in the midst of proposed legislative changes to deal with an increasing number of refugees. On a general level may I say that this subject matter, it seems to me, calls for a reduction in harmful rhetoric which often arises and a focus on timely decision making cognisant of rights of refugees including children. It is also as I have said previously an area which should be guided by adherence to the rule of law.

I note from the statistics I have read that 40 per cent of the displaced people in 2022 were children below 18 years of age and that between 2018-2022 an average of 385,000 children were born as refugees.

Of course, the underpinning of refugee law is humanitarian protection. People throughout history have had to move from their countries of origin due to fear of persecution. That is nothing new. However, the United Nations codified a working practice in 1951 with the Refugee Convention following the large displacement of people following World War II. The world has changed since then however people continue to be displaced due to persecution. Our courts have continued to hear cases at tribunal level and some cases have reached the higher courts.

The primary provision of law when considering the effect of asylum is the 1951 Geneva Convention. Article 1(A)(2) of the 1951 Geneva Convention contains the following definition of a "refugee":

"[T]he term 'refugee' shall apply to any person who ... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

Of core significance is that an individual who satisfies the definition of Article 1A(2) has, subject to limited exceptions, the right not to be refouled. Article 33 of the 1951 Geneva Convention sets out the "Prohibition of Expulsion or Return" as follows:

“1. No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.”

I mention three recent cases heard by the Court of Appeal in Northern Ireland which illustrate the challenges faced in this area and the interplay between the Geneva Convention and other international instruments. In the case of *AB*<sup>1</sup>, the Northern Ireland Court of Appeal had to consider asylum law in another context. *AB* concerned the interplay between asylum law and the law on international child abduction. It came before us as an appeal against the decision of the High Court to stay an order made under article 12 of the 1980 Hague Convention on International Child Abduction for a child, *AB*, to Switzerland, her country of habitual residence. *AB* had been born in Switzerland after her parents, since divorced, had settled there after leaving their country of birth, Eritrea from where asylum was claimed based upon claims of persecution.

At the first instance hearing and during the Court of Appeal proceedings, the mother’s asylum claim remained outstanding. Prior to delivery of our written judgment, the Home Office granted the mother asylum on the basis that she had a well-founded fear of persecution in her country of birth, Eritrea. With the determination of the asylum claim, the impugned stay on implementation of the return order lapsed and subsequently a large measure of agreement was reached on return arrangements and specifically guarantees of safety from Switzerland which it was accepted was a safe country prior to the completion of the case.

In the case of *Said*<sup>2</sup> the Court of Appeal reiterated that every asylum applicant enjoys the protections conferred by the Refugee Convention, the Reception Directive and several related provisions of domestic UK law. In addition to a right to determination of one’s application for refugee status and the protection against non-refoulement pending such determination a right exists to certain facilities and support in the formulation and processing of the asylum application: in particular rights to be interviewed, to have the services of an interpreter at public expense, to receive a copy of interview records, to have an effective opportunity to consult a lawyer, to assistance in the ascertainment of all relevant facts and the provision of

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<sup>1</sup> *In the matter of AB, a minor* [2023] NICA 37

<sup>2</sup> *In re Said* [2023] NICA 49

supporting evidence, to have their asylum applications processed and determined by suitably trained Home Office officials, to have their application determined within a reasonable time, to receive a reasoned determination and to receive information about how to challenge the decision.

Finally, in another family law case<sup>3</sup> the issues spanned extradition, potential trafficking and asylum claims in relation to a child who had spent over three years in prison in Northern Ireland with her mother. Extradition was sought by the French authorities based a conviction warrant against the mother for serious human trafficking offences. The mother applied for protection as a trafficked person but by letter of October 2019 the National Referral Mechanism (“NRM”) decided there were no reasonable grounds for protection. There was also a rather unclear picture attaching to the mother’s asylum and immigration position as nothing concrete had been achieved over many years. Applying the best interests consideration to the case the court determined that the child had to be removed from the prison environment as she was effectively detained and suffering developmental delay pending resolution of the mother’s issues across the extradition and asylum spheres.

I think it is fair to say that a feature of all these cases have been delays in determining issues associated with asylum.

On a practical level, having just come from a conference of Commonwealth magistrates and judges, I think interpretation services for those within the asylum system needs to be monitored to make sure it is effective, that cultural nuances are picked up and maybe that more digital services are used to avoid delays.

Finally, looking to the future, another area of potential interplay is that of asylum law and climate change justice. I have spoken previously about what Siofra O’Leary terms ‘a rising tide of climate change litigation around the world’. Current cases are not only strategic, seeking to challenge government policy and achieve change in that way, but also individualistic, engaging rights such as the right to life and the right to respect for private and family life. The natural disasters we see occurring around the world are catastrophic for people, but such events can also have very personal impacts and sometimes lead to conflict and persecution.

I wonder whether climate change could therefore be a driver for the forced displacement of persons and the seeking of refuge. I know this is a matter of concern for the UN Refugee Agency. Undoubtedly, Dr Triggs’ lecture this evening will illuminate further on where we are and where we are going in this important area of law which affects many lives across the world.

Thank you.

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<sup>3</sup> *Belfast Health and Social Care Trust and A Mother with The Deputy Public Prosecutor of Marseille District Court, Republic of France and The Northern Ireland Commissioner for Children and Young People and in the matter of SB (a child)* [2023] NICA 48