

# **Submission from the Committee on the Administration of Justice (CAJ) to the United Nations Human Rights Committee on the 8<sup>th</sup> Periodic Report submitted by the United Kingdom under the International Covenant on Civil and Political Rights (ICCPR)**

## **Compliance with the ICCPR and Northern Ireland**

**February 2024**

### **About CAJ**

The Committee on the Administration of Justice (CAJ) is an independent human rights NGO with cross community membership in Northern Ireland and beyond. It was established in 1981 and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its international human rights obligations. CAJ is affiliated to the International Federation of Human Rights (FIDH).

CAJ regularly engages with the UN and Council of Europe monitoring mechanisms, including a 2017 submission to the Committee's follow up procedure relating to '*accountability for conflict related violations in Northern Ireland*'<sup>1</sup> in response to the Committee's previous Concluding Observations.<sup>2</sup>

CAJ welcomes the opportunity to provide evidence to the Committee in advance of the March 2024 dialogue with the UK authorities, further to the Committee's 2020 List of Issues<sup>3</sup> and the 2021 UK State Report.<sup>4</sup>

### **Focus of this submission:**

- Constitutional & Legal Framework within which the Covenant is implemented [Art 2].
- Accountability for conflict-related violations in Northern Ireland [Arts. 2, 6, 7 and 14]

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<sup>1</sup> [Submission from the Committee on the Administration of Justice \(CAJ\) to the United Nations Human Rights Committee in response to the Concluding Observations on the 7th Periodic Report of the UK under the International Covenant on Civil and Political Rights \(ICCPR\), June 2017, Follow up Procedure: "accountability for conflict-related violations in Northern Ireland" \(CCPR/C/GBR/CO/7, paragraph 8\).](#)

<sup>2</sup> [CCPR/C/GBR/CO/7 Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland](#) 17 August 2015

<sup>3</sup> [CCPR/C/GBR/QPR/8 List of Issues for the UK, 5 May 2020 \('List of Issues 2020;'\)](#)

<sup>4</sup> [CCPR/C/GBR/8 Eighth periodic report submitted by the United Kingdom](#), 11 November 2021.

## Constitutional and Legal Framework within which the Covenant is implemented (Art. 2)

1. The Committee's List of Issues seeks information from the UK authorities on legislation and policy giving full effect to the ICCPR, including information on reform or repeal to the Human Rights Act 1998 and measures taken to ensure *the Bill of Rights for Northern Ireland* incorporates the rights enshrined in the Covenant.<sup>5</sup>
2. The main agreement of the Northern Ireland peace process is the UK-Ireland Belfast/Good Friday Agreement 1998 (GFA). The GFA was approved by referendum and incorporated as a bilateral (UK-Ireland) UN-deposited treaty.<sup>6</sup>
3. The GFA requires the codified incorporation of the European Convention of Human Rights (ECHR) into Northern Ireland law, with 'direct access to the courts' and 'remedies for breach(es)'.<sup>7</sup> This commitment was largely taken forward through the Human Rights Act 1998.
4. In addition, through legislation in the UK Parliament, there was to be the supplementary ECHR+ Bill of Rights for Northern Ireland, the content of which was last advised by the GFA-established NHRI (The Northern Ireland Human Rights Commission) in 2008.<sup>8</sup> The Bill of Rights for Northern Ireland would have provided for legislative underpinning of broader ICCPR rights.
5. Despite the treaty-based commitments under the GFA and ICCPR, Ministers in the present UK Government have repeatedly threatened to repeal the Human Rights Act 1998 (HRA) or even to leave the ECHR entirely. Proposals to repeal the HRA were ultimately discontinued.<sup>9</sup> However, Ministers have continued to dismantle the protections of the HRA piece by piece in separate bills.
6. Legislation dealing with legal liability for overseas military operations, covert police operations, and the legacy of the Northern Ireland conflict has removed 'direct access to the courts' and remedies for ECHR breaches in their areas of focus.<sup>10</sup> More recent immigration legislation has disapplied entire provisions of the HRA, with Ministers expressly pressing the UK Parliament to legislate regardless of ECHR-incompatibility.<sup>11</sup>

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<sup>5</sup> List of Issues, 2022, paragraph 3.

<sup>6</sup> Belfast/Good Friday Agreement 1998, UK Treaty Series 51 (2000 Cm 4705), Article 2 of the treaty binds the UK to implement provisions of the annexed Multi-Party Agreement, which correspond to its competency.

<sup>7</sup> GFA 1998, Rights, Safeguards and Equality of Opportunity Section, paragraph 2: "*The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency.*"

<sup>8</sup> <https://nihrc.org/publication/detail/advice-to-the-secretary-of-state-for-northern-ireland>

<sup>9</sup> See CAJ response: <https://caj.org.uk/2022/03/10/caj-responds-to-human-rights-act-consultation/>

<sup>10</sup> Overseas Operations (Service Personnel and Veterans) Act 2021

(<https://publications.parliament.uk/pa/jt5801/jtselect/jtrights/665/66502.htm>); Covert Human Intelligence Sources (Criminal Conduct) Act 2021 (see: <https://caj.org.uk/publications/submissions-and-briefings/briefing-for-second-reading-of-the-covert-human-intelligence-sources-criminal-conduct-bill/>); Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (see below).

<sup>11</sup> See CAJ written evidence on the Safety of Rwanda (Asylum & Immigration) Bill 2023

<https://committees.parliament.uk/writtenevidence/127578/html/> and previously Illegal Migration Act <https://caj.org.uk/publications/submissions-and-briefings/briefing-note-illegal-migration-act-land-border/>

7. The Bill of Rights for Northern Ireland is a separate outstanding commitment from the 1998 GFA (not to be confused with the abandoned UK 'Bill of Rights Bill' the purpose of which was to repeal the HRA).
8. The Bill of Rights for Northern Ireland would have incorporated ICCPR rights and other UN and Council of Europe treaty-based commitments into Northern Ireland law. As such, it would have provided a key safeguard over the exercise of Executive and Legislative power in Northern Ireland by both the UK Government and the power-sharing Northern Ireland Executive (regional government) and legislature (Northern Ireland Assembly). In the absence of the safeguards which a Bill of Rights would have provided, the Northern Ireland administration has been unstable and dysfunctional.<sup>12</sup>
9. The 2020 'New Decade New Approach' (NDNA) deal, between the UK and Ireland and Northern Ireland parties, restored the Northern Ireland institutions after three years of suspension (2017-2020).<sup>13</sup>
10. NDNA provided for a new process for progressing the Bill of Rights for Northern Ireland with an Ad Hoc Committee of the Northern Ireland Assembly. The work of this Committee was impeded but it nevertheless produced a final report.<sup>14</sup> Four of the five parties in the NI Executive stated their support for the Bill of Rights in this process (the exception being a party that opposed the GFA).<sup>15</sup> There is broad cross-community support for the Bill of Rights.<sup>16</sup>
11. The UK 8<sup>th</sup> Periodic Report claims that it was 'always envisaged' in the GFA that there would need to be 'consensus' between Northern Ireland political parties on the content of a Bill of Rights before legislation was taken forward.<sup>17</sup> This is false, the GFA makes no such reference and expressly defers to the NHRI for the content of the NI Bill of Rights.<sup>18</sup>
12. The Committee's List of Issues asks the state party for "information on measures taken to address the reported increase in hate crimes" including comment on the low rate of convictions related to hate crimes. Hate crime is a serious problem in

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<sup>12</sup> See: CAJ-UNISON [Written Evidence to the NI Assembly Ad Hoc Committee on the Bill of Rights from the Equality Coalition Co-Conveners](#) October 2020

<sup>13</sup> [UK-Ireland New Decade New Approach deal](#) 2020

<sup>14</sup> [NIA 156/17-22 Report of the Ad Hoc Committee on a Bill of Rights](#), 14 February 2022

<sup>15</sup> [NIA 156/17-22 Report of the Ad Hoc Committee on a Bill of Rights](#), paragraph 13.

<sup>16</sup> [Polling shows public demand stronger rights protections following Covid-19 | Human Rights Consortium](#)

<sup>17</sup> [CCPR/C/GBR/8 Eighth periodic report submitted by the United Kingdom, 11 November 2021.](#) (para 14).

<sup>18</sup> The full text of the GFA commitment is: "*The new Northern Ireland Human Rights Commission (see paragraph 5 below) will be invited to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and - taken together with the ECHR - to constitute a Bill of Rights for Northern Ireland. Among the issues for consideration by the Commission will be: • the formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland; and • a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors.*" (GFA, Rights, Safeguards and Equality of Opportunity Section, paragraph 4).

Northern Ireland, with the added dimension of paramilitary involvement in racist and sectarian intimidation.<sup>19</sup> The Northern Ireland Justice Minister commissioned a judge-led *Independent Review of Hate Crime Legislation in Northern Ireland*, which reported in 2020.<sup>20</sup> The collapse of the Northern Ireland Assembly from 2022-2024 means new hate crimes legislation is yet to progress.

**The Committee may wish to press the UK on:**

- **The incremental rolling back in the domestic legal order of the incorporation of ECHR and hence ICCPR rights, including Bills limiting ‘direct access to the courts’ and ‘remedies for breach(es)’ of ECHR rights (in conflict with the Good Friday Agreement in Northern Ireland).**
- **Introducing legislation for the Bill of Rights for Northern Ireland as a vehicle to incorporate further ICCPR rights, without a pre-condition (not contained in the Good Friday Agreement) of all party consensus.**
- **Progress on implementation legislation for the Independent Review of Hate Crime Legislation in Northern Ireland.**

## **Accountability for conflict-related violations in Northern Ireland (Arts. 2, 6, 7 and 14)**

**The current and proposed mechanisms for accountability for conflict-related violations**

13. The current system in Northern Ireland for investigating violations relating to the 1968-1998 Northern Ireland conflict, was a product of a series of cases taken by CAJ and others to the European Court of Human Rights (ECtHR) in the early 2000s.
14. These cases, known as the *McKerr* group of cases (or ‘Cases concerning the actions of the security forces in Northern Ireland’), found the UK in breach of procedural duties under Article 2 ECHR to ensure independent, effective investigations into these conflict-related killings.<sup>21</sup>
15. In response to these ECtHR rulings the UK agreed a remedial ‘Package of Measures’, an ad hoc system of peace process and existing judicial and investigative mechanisms that were reformed to allow them to deal with conflict-related cases. The Package of Measures includes:

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<sup>19</sup> In 2017 a [Thematic Review of Policing Race hate crime](#) by the Northern Ireland Policing Board (the official oversight body for policing) stated: “hate crime will not be addressed unless and until all agencies are able and willing to acknowledge and discuss the issues, including the reported threat from paramilitary groups targeting minority ethnic communities.” (See FN37, p73). This pattern of has continued into 2023 and includes orchestrated racist intimidation in particular areas. (See for example investigative reporting in [The Detail: Race hate crimes in one area of Belfast have doubled since 2017 - Investigations & Analysis - Northern Ireland from The Detail](#)) There has also recently been a prevalence paramilitary-linked racist signage in public space including that inciting discrimination in housing by threatening public and private landlords who rent to migrants. <https://www.belfasttelegraph.co.uk/news/northern-ireland/south-belfast-tower-block-attacked-as-tensions-rise-in-belvoir-estate-area/a161943623.html> See also [Frontline Lessons for the Future Collaborative research on the impact of immigration law and policy in post-Brexit Northern Ireland June 2022](#) section 4.1.3.

<sup>20</sup> <https://www.justice-ni.gov.uk/publications/hate-crime-legislation-independent-review>

<sup>21</sup> ‘Cases Concerning the Actions of the Security forces in Northern Ireland’ or ‘McKerr Group of Cases’ [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680a097b6](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a097b6)

- Inquests into conflict-related deaths (a judge led truth-trial establishing facts without civil or criminal liability).
  - Independent investigations by the (peace-process established) Police Ombudsman into grave or exceptional police misconduct during the conflict.
  - Legacy investigations by the Police Service of Northern Ireland (PSNI) and independent police investigations by 'called in' independent police teams.
  - Changes to prosecutorial decision-making requiring the giving of reasons for prosecutorial decisions, against set criteria.
  - Public inquiries.
16. Families have also been able to benefit from truth-recovery and reparations through civil court proceedings into conflict-related incidents.
17. As the mechanisms were ad hoc, and faced regular obstruction from state agencies, after many years of negotiations the UK-Ireland and Northern Ireland parties agreed the Stormont House Agreement (SHA) in 2014. This provided for the replacement of the Package of Measures with new overarching independent legacy institutions focusing largely on truth recovery but also keeping a justice route open. These institutions were to be:
- *Historical Investigations Unit (HIU)*: an independent body with full police-like powers to investigate unresolved conflict-related deaths and produce Family Reports, providing both a possible route to justice and truth recovery.
  - *Independent Commission on Information Retrieval (ICIR)*: independent international body to receive protected statements in confidence and pass to families, on which British and Irish Governments agreed a treaty in 2015.
  - The continuation of judicial legacy Inquests as a separate process (families would also be able to continue to take civil legal proceedings).

### **The UK response to the Committee's 2015 Concluding Observation**

18. Shortly after this, the Committee, in its Concluding Observations on the UK in 2015, welcomed the 2014 Stormont House Agreement, and called on the UK "*as a matter of particular urgency*" to ensure:
- ...that independent, impartial, prompt and effective investigations, including those proposed under the Stormont House Agreement, are conducted to ensure a full, transparent and credible account of the circumstances surrounding events in Northern Ireland with a view to identifying, prosecuting and punishing perpetrators of human rights violations, in particular the right to life, and providing appropriate remedies for victims;<sup>22</sup>
19. The Committee selected this issue as part of its urgent follow up procedure, noting a year later the lack of progress by the UK. The Committee of Ministers of the Council of Europe also called for the implementation of the SHA in a human rights compliant manner and expressed profound concerns at the delays in doing so.<sup>23</sup> The 2017

<sup>22</sup> CCPR/C/GBR/CO/7 [7] '[Accountability for conflict-related violations in Northern Ireland](#)'

<sup>23</sup> CM/Del/Dec(2019)1340/H46-30.

Universal Periodic Review (UPR) of the UK by the Human Rights Council also heard calls for implementation of the SHA and to end resourcing delays into conflict-related inquests.<sup>24</sup>

20. The UK prevaricated over implementation of the SHA but ultimately in 2018 conducted a public consultation on draft implementation legislation. Following this, the official UK consultation response document concedes that “there was majority broad support for the institutional framework” of the SHA and that a “clear majority of all respondents” opposed an amnesty or statute of limitations, with many arguing such a move “could risk progress towards reconciliation.”<sup>25</sup>

### **Delivery of the Package of Measures**

21. During this time, families, NGOs, and lawyers (often utilising the incorporation of the ECHR in Northern Ireland law) managed to overcome years of official obstruction and limitation placed on the Package of Measures. In this context the Package of Measures started to deliver truth-recovery, reparations, and historical clarification for families like never before. In 2022 the Council of Europe Committee of Ministers noted the ‘vital role played by the inquest system’ as well as the Police Ombudsman in legacy investigations.<sup>26</sup>

22. In 2019, the Northern Ireland Lord Chief Justice announced a five-year plan to deal with 54 outstanding legacy inquests into 95 deaths.<sup>27</sup> Despite some delays due to the pandemic and other factors, inquests have taken place. Many of these have pointed to unlawful killings by the security forces:

- Stephen Geddis (aged 10) shot dead by British soldier on 30 August 1975, Coroner (judge) held (verdict 06.09.22) that the victim posed no threat, and the firing was not justified.
- Thomas Mills, shot dead by British soldier in July 1972, Coroner held (13.05.22) that the soldier was not justified in opening fire and the force used was disproportionate to the threat perceived.
- Pat McElhone, shot dead by British soldier on 7<sup>th</sup> August 1974, Coroner held (21.01.21) that the shooting cannot be justified.
- Ballymurphy massacre, concerning the deaths of ten civilians shot dead by the British army in August 1971 (Francis Quinn, Fr Hugh Mullan, Noel Phillips, Joan Connolly, Daniel Teggart, Joseph Murphy, Edward Doherty, John Laverty, Joseph Corr, and John James McKerr.) Coroner held (11.05.21) that the killings were unjustified.

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<sup>24</sup> UN Doc A/HRC/WG.6/27/L.7, 8 May 2017 (Draft report of UPR Working Group on UK) ‘6.156. Increase the necessary resources to the service of the Coroner to allow him to carry out impartial, swift and effective investigations on all the deaths linked to the conflict in Northern Ireland (Switzerland); ‘6.157. Continue negotiations on transitional justice issues and implement transitional justice elements of the Stormont House Agreement (Australia).

<sup>25</sup> See pgs 12 and 21: Addressing the Legacy of the Past, Analysis of the Consultation Responses:

<https://www.gov.uk/government/news/government-publishes-summary-of-responses-to-legacy-consultation>

<sup>26</sup> Paragraph 8, Committee of Ministers’ Decision in the McKerr Group of Cases v UK, 1428<sup>th</sup> meeting, 8-9 March 2022, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680a5c3e2](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a5c3e2)

<sup>27</sup> [Presiding Coroner’s Statement - State of Readiness Event - 7 June 2019.pdf \(judiciaryni.uk\)](#)

- Kathleen Thompson, shot dead by British soldier on 6<sup>th</sup> November 1971. Coroner held (29.06.22) that the shooting was ‘unjustified.’
- Leo Norney (17) shot dead by British soldier on 13 September 1975. Coroner held (03.07.23) that Leo was ‘entirely innocent’ and that he had been deliberately killed.<sup>28</sup>

23. In 2022 there were over 700 pages of truth recovery in three Police Ombudsman reports alone:

- The ‘Operation Greenwich’ report, covering 19 murders and multiple attempted murders committed around the northwest of Northern Ireland between 1989 and 1993 by a loyalist paramilitary group, provides 338 pages of information recovery and raises significant concerns regarding collusive activity by the Police with the paramilitaries responsible, finding complaints by families had been ‘legitimate and justified’.<sup>29</sup>
- The ‘Operation Achille’ report provided a further 344 pages of information recovery in relation to 11 paramilitary killings in the south Belfast area in the 1990s including the Sean Graham Bookmakers massacre in 1992. The Police Ombudsman identified “significant investigative and intelligence failures” and “collusive behaviours” by the police.<sup>30</sup>
- The ‘Derry 4’ report relating to a miscarriage of justice against four young men in 1979 who were wrongly convicted following what the Ombudsman held was having been ‘subjected to coercion and oppression before “confessing” to terrorist crimes.’<sup>31</sup>

24. Civil litigation initiated by victims and survivors has also provided reparations, accountability, and information recovery in relation to conflict-related incidents. In 2022 there were over 500 civil claims against the military, with 43 completed in the previous three years resulting in reparations in 29 cases.<sup>32</sup> Instances include:

- In 2021 the military and police paid £1.5 million GBP in damages in a settlement to relatives and survivors of the Miami Showband attack in 1975 against a popular music band, in a civil claim alleging security force collusion with loyalist paramilitaries.<sup>33</sup>
- In March 2022 the High Court in Belfast awarded reparations of £350k GBP to the family of the late Liam Holden in a ruling that found he had been tortured by the British Army, including using ‘waterboarding’. Mr Holden had been sentenced to death in 1973 having been wrongly convicted of the murder of a soldier, Frank Bell, on the basis of a confession, this was later held to be a

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<sup>28</sup> CAJ Rule 9 Submission to the Committee of Ministers from the Committee on the Administration of Justice (CAJ) (July 2023)

<sup>29</sup> <https://www.policeombudsman.org/Media-Releases/2022/Collusive-behaviours-but-no-prior-knowledge-of-att>

<sup>30</sup> <https://www.policeombudsman.org/Media-Releases/2022/Investigative-and-intelligence-failures-and-collus>

<sup>31</sup> <https://www.policeombudsman.org/Media-Releases/2022/Young-men-were-subjected-to-coercion-and-oppressio>

<sup>32</sup> <https://www.theyworkforyou.com/wrans/?id=2022-05-19.HL374.h>

<sup>33</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-59641564>



miscarriage of justice. The narrative verdict by the Court runs to 60 pages of information recovery.<sup>34</sup>

- In another case the High Court in Belfast awarded compensation of £90k GBP to a man who as a child had witnessed the sectarian killing of his grandfather Sean McParland in 1994. The killing involved a police agent within a loyalist paramilitary group. The judge held that the police knew that the informant had already confessed to his role in other killings but had “*not only turned a blind eye to Informant 1’s serious criminality*” but also “*went further and took active measures to protect (him) from any effective investigation and from prosecution, despite the fact that (he) had admitted his involvement in previous murders and criminality.*”<sup>35</sup>

25. The UK delay in legislating for the SHA has to be seen in the context of unease within sections of the governing Conservative party at what was being revealed by the increasing delivery of independent investigations under the Package of Measures. (and concerns this would increase under the SHA). These findings have often contradicted the official versions of events and identified patterns of human rights violations relating to state actors. As far back as in 2016 the then UK Secretary of State for Northern Ireland raised concerns, in the context of delivery of the package of measures, that a ‘pernicious counter narrative’ of the conflict was developing.<sup>36</sup>

26. Following the first decisions on prosecutions of soldiers as a result of legacy investigations, there were initial calls in the UK Parliament for an amnesty, with a subsequent mobilisation of a section of the Conservative party, military veterans and some UK newspapers framing judicial and official independent investigations in legacy cases as a ‘witch hunt’ against the military.<sup>37</sup> (It should be noted most legacy prosecutions have in fact been against non-state actors and there have only been a handful of prosecutions of soldiers, resulting in total one conviction and no jail time served by any soldiers).<sup>38</sup>

27. In the context of the calls for an amnesty for the military, in December 2019 the UN Committee Against Torture (CAT) raised concerns at: “*...recent statements by high-level officials that they are contemplating measures to shield former public officials from liability.*” CAT recommended that the UK: “*...refrains from enacting amnesties or statutes of limitations for torture or ill-treatment, which the Committee has found to be inconsistent with the States parties’ obligations under the Convention*”.<sup>39</sup>

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<sup>34</sup> William (Liam) Holden and Ministry of Defence and Chief Constable of The Police Service of Northern Ireland [2023] NIKB 39 [IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND \(judiciaryni.uk\)](https://www.judiciaryni.uk/) [236]

<sup>35</sup> <https://www.belfasttelegraph.co.uk/news/courts/belfast-man-awarded-90k-damages-over-grandfathers-killing-involving-police-informant/729726937.html>

<sup>36</sup> <https://www.gov.uk/government/speeches/villiers-a-way-forward-for-legacy-of-the-past-in-northern-ireland>

<sup>37</sup> For a critique of the official narrative such prosecutions constitute a ‘witch hunt’ against the military see <https://www.dealingwiththepastni.com/project-outputs/project-reports/prosecutions-imprisonment-and-the-stormont-house-agreement-a-critical-analysis-of-proposals-on-dealing-with-the-past-in-northern-ireland> pages 8-16.

<sup>38</sup> <https://www.amnesty.org.uk/press-releases/northern-ireland-ex-soldier-guilty-manslaughter-aidan-mcanespie-troubles-case>

<sup>39</sup> [CAT/C/GBR/CO/6](#), Para 40 and Para 41(f)



28. The then UK Government of Prime Minister Theresa May resisted the calls for amnesty and made repeated commitments to the Council of Europe and domestically to implement the SHA. Most notably this occurred under the (UK-Ireland) *New Decade, New Approach* deal (NDNA) that restored the power-sharing Northern Ireland government in January 2020. The bilateral NDNA deal committed the UK Government to introducing legislation for Stormont House Agreement in the UK Parliament “within 100 days” (i.e. by April 2020).<sup>40</sup>

### **The unilateral abandonment of the SHA by the UK**

29. Shortly after NDNA the UK Government, now under Prime Minister Boris Johnson, removed the Northern Ireland Secretary of State Julian Smith who had negotiated the NDNA deal. Then on the 18 March 2020, without any forewarning, (through a Written Ministerial Statement (WMS) to the UK Parliament) the UK signalled the unilateral abandonment of the commitment to legislate implement the SHA.<sup>41</sup> Rather than implement the SHA, the WMS instead proposed a vague and unclear alternative ‘fast track’ process.

30. The WMS was intentionally made on the same day as the introduction into the UK Parliament of the Overseas Operations (Service Personnel and Veterans) Bill, which limits the ability to prosecute British soldiers for war crimes abroad. Noting the introduction of that Bill, the WMS made clear that its intent in unilaterally abandoning the SHA was “to ensure equal treatment of Northern Ireland veterans and those who served overseas.”<sup>42</sup>

31. No further detail on the UK’s intention was set out during 2020. The Council of Europe Committee of Ministers issued an Interim Resolution in December 2020 expressing ‘profound concern’ that the “UK had not provided any further information on its proposed approach to legacy investigations since the Written Ministerial Statement of 18 March 2020, despite an express request from the Committee” and called upon the UK “to follow up on their previous commitments to introduce legislation in the UK Parliament to implement the SHA.”<sup>43</sup>

### **The UK Command Paper on Legacy 2021**

32. On 14 July 2021 the UK Government published a Parliamentary Command Paper “*Addressing the legacy of Northern Ireland’s past.*”<sup>44</sup> This proposed legislation that would include a statute-bar on investigating conflict-related incidents and end judicial activity across a spectrum of criminal cases, civil cases and coronial inquests, along with a broad unconditional and unqualified amnesty for conflict-related offences. Academic colleagues at CAJ compared and assessed the proposed amnesty as broader in scope than that introduced in Chile under General Pinochet.<sup>45</sup>

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<sup>40</sup> [UK-Ireland New Decade New Approach deal](#) 2020

<sup>41</sup> <https://www.gov.uk/government/news/addressing-northern-ireland-legacy-issues>

<sup>42</sup> Secretary of State for Northern Ireland, Addressing Northern Ireland Legacy Issues: Written statement - HLWS163 (18 March 2020) <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2020-03-18/HLWS163/>

<sup>43</sup> CM/ResDH(2020)367 [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680a097b6](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a097b6)

<sup>44</sup> <https://www.gov.uk/government/publications/addressing-the-legacy-of-northern-irelands-past>

<sup>45</sup> <https://www.dealingwiththepastni.com/project-outputs/project-reports/model-bill-team-response-to-the-uk-government-command-paper-on-legacy-in-ni>

33. The Command Paper also proposed to establish a new legacy body, to ‘recover information’ in relation to conflict deaths and serious injuries, but only through a desktop review of papers and information ‘volunteered’ to it through statements.
34. To seek to justify the proposals, Ministers sought to present the current ‘Package of Measures’ as being focused on prosecutions. By contrast in 2016 the then UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence Pablo de Grieff conducted a visit to the UK focusing on Northern Ireland legacy issues, and produced a comprehensive report which observed that the Package of Measures “resemble more truth-seeking initiatives than justice measures.”<sup>46</sup>
35. Following the Command Paper the former Special Rapporteur Mr De Grieff stated in a speech to Ulster University that he was ‘shocked’ by its content stating that:

The paper is full of contrapositions that were characteristic of discussions more than thirty years ago: it contraposes truth and justice; justice and reconciliation; adopts a reductionistic, retributivist understanding of justice ... It takes a page from regimes that have sought self-amnesties in order to defend a ‘forward looking’ attitude in order to address what it calls ‘the long shadow that the legacy of the Troubles continue to cast.’ ... Astonishingly, the paper makes its proposals arguing that the current system is not working, citing ‘the operational difficulties of investigating complex cases,’ alluding to a tradeoff of resources between truth and justice, and wanting to spare old officials from “the fear of unfair investigations.” One would think we were talking about a low-income, fragile, conflict afflicted country.<sup>47</sup>

36. Mr De Grieff’s central concern was on the international consequences of the UK approach. With reference to his 2017 report to the Human Rights Council on the global state of transitional justice he highlighted that one of the main threats was:

...the selectivity in the way in which international human rights norms and obligations are implemented. I think that the UK’s proposal, unfortunately, counts as an example of such selectivity. The United Kingdom as part of the UN’ security council and on its own initiative in bilateral relations has not only defended but in some cases required countries under much less auspicious circumstances to implement comprehensive transitional justice policies that include criminal investigations and prosecutions. For the UK, a permanent member of the security council, to apply to itself a completely different standard is not only an example of inconsistency and of the much mentioned and criticized double standard, but, I believe, that it will do great damage to the cause of transitional justice internationally. ... [The UK policy] will do great damage to the transitional justice cause globally, to the cause of justice,

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<sup>46</sup> UN Doc A/HRC/34/62/Add.1 Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his mission to the United Kingdom of Great Britain and Northern Ireland, (17 November 2016) para 20.

<sup>47</sup> Pablo de Greiff, Senior Fellow. NYU School of Law former UN Special Rapporteur for the promotion of truth, justice, reparation and guarantees of non-recurrence (2012-2018), Keynote Speech for the Webinar “The UK Government’s Proposed Amnesty for Legacy Crimes” organized by the Transitional Justice Institute, Ulster University. November 24<sup>th</sup>, 2021 audio available at <https://www.youtube.com/watch?v=tyRcfhSpzDo> at 1:28]

and the fight against impunity, and therefore, from my perspective, it's not just victims (on all sides in Northern Ireland) who should worry about this. This should be an object of international concern.<sup>48</sup>

37. In formal response to the Command Paper the serving Special Rapporteur Mr. Fabián Salvioli alongside Mr. Morris Tidball-Binz, Special Rapporteur on extrajudicial, summary or arbitrary executions issued a joint statement on the 10 August 2021, expressing: *“serious concern about the UK Government's plan to ban all prosecutions, impede investigations, and preclude victims' civil claims in connection with “the Troubles” in Northern Ireland, which would effectively institute a de-facto amnesty and blanket impunity for the grave human rights violations committed during that period.”* The Special Rapporteurs warned that the UK proposals will thwart victims' right to truth and to an effective remedy and place the UK *“in flagrant violation of its international obligations”*.<sup>49</sup> This concern was echoed in the subsequent report by Mr Salvioli to the Human Rights Council.<sup>50</sup>

38. In September 2021, the Council of Europe Commissioner for Human Rights, Dunja Mijatović, published correspondence to the UK in which she had warned that the proposals under the Command Paper *“would undermine human rights protections and would cut off avenues to justice for victims and their families”*. Further stating that *“If adopted, the plan would lead to impunity and cannot be the foundation on which transitional justice is built.”*<sup>51</sup> The correspondence raises concerns about the conflict with the UK obligations under the ECHR and the Command Paper proposals which include the introduction of:

...a statute of limitations for all Troubles-related crimes, which would put an end to all ongoing and any future attempts at prosecution. This is accompanied by a statutory bar on the Police Service of Northern Ireland (PSNI) and Police Ombudsman to investigate Troubles-related incidents, as well as further steps to end all judicial activity in this area with regard to current and future criminal and civil cases and inquests.<sup>52</sup>

39. The Commissioner states that ECHR compliance is *“particularly endangered by the proposed shutting down of the above-mentioned avenues, and their replacement with an information recovery body with limited investigatory powers that would fall short of the requirements under the ECHR, and which would mainly carry out investigations on request of next of kin.”*<sup>53</sup>

40. There has been a widespread rejection of the UK proposals from human rights and victims NGOs, the Irish government and all parties in the Northern Ireland Executive – with parties unanimously passing a motion in the legislature (Northern Ireland

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<sup>48</sup> As above.

<sup>49</sup> OHCHR, ‘Press release: UN experts voice concern at proposed blanket impunity to address legacy of “the Troubles” in Northern Ireland’, 10 August 2021.

<sup>50</sup> A/HRC/48/60/Add.2 Follow-up on the visits to Burundi, the United Kingdom of Great Britain and Northern Ireland and Sri Lanka, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli 5 August 2021.

<sup>51</sup> <https://www.coe.int/en/web/commissioner/-/northern-ireland-legacy-proposals-must-not-undermine-human-rights-and-cut-off-victims-avenues-to-justice>

<sup>52</sup> As above.

<sup>53</sup> As above.

Assembly) expressing a rejection of the UK proposals which (the motion stated) “do not serve the interests, wishes or needs of victims and survivors nor the requirements of truth, justice, accountability, acknowledgement and reconciliation”<sup>54</sup>

41. With reference to its proposals, the UK Periodic Report to the Committee claims that “The UK government is committed to working with civic society, including victims’ groups, the political parties in Northern Ireland and the Irish Government on the way forward on these complex and sensitive issues.”<sup>55</sup> It is important to stress that this did not occur. The legislation was developed unilaterally. A cross-party UK Parliamentary Inquiry in October 2020 held that: “We are dismayed by the lack of consultation and engagement with representative groups by the [UK ministry] on its new proposals.”<sup>56</sup> Victims groups also complained there was no meaningful engagement at all.<sup>57</sup> The national equality body – the Equality Commission for Northern Ireland twice investigated the Northern Ireland Office (the UK ministry responsible for the legislation) finding it had breached procedural duties in the development of its legacy policy. The Northern Ireland Office had also withheld documentation from the Equality Commission despite its exercise of formal powers of investigation.<sup>58</sup>

### **The Northern Ireland Troubles (Reconciliation and Legacy) Act 2023**

42. Despite the clear concerns from UN special procedures mandate holders and the Council of Europe, the Irish government, victims and survivors and all political parties in Northern Ireland, the UK unilaterally introduced legislation in May 2022 to implement its proposals. This became law in September 2023 as the Northern Ireland Troubles (Reconciliation and Legacy) Act 2023 (‘the Legacy Act’).
43. The main effects of the Legacy Act are broadly three-fold, it will:
- Shut down the ‘Package of Measures’ entirely– including inquests and even civil litigation, with a statute-bar on police and ombudsman investigations into conflict-related violations.
  - Introduce a form of amnesty, in the form of a ‘conditional immunity scheme’ with a conspicuously low eligibility threshold, including for torture. Suspects will only have to give information that they think themselves is true and the

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<sup>54</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-57892882>

<sup>55</sup> CCPR/C/GBR/8 Eighth periodic report submitted by the United Kingdom, 11 November 2021. Paragraph 29.

<sup>56</sup> [NI Affairs Committee, October 2020 report](#), paragraphs 24, 4 & 6.

<sup>57</sup> The victims group WAVE Trauma Centre– ‘the largest cross community victims and survivors support group in Northern Ireland’ previously raised concerns that from the March 2020 Written Ministerial Statement [WMS] on the UK had “unilaterally and without reference to any victims and survivors stakeholder groups” set aside the SHA to instead focus on protecting military veterans through a process of closing the vast majority of unresolved cases through a process of ‘speedy desktop review’ that would constitute a *de facto* amnesty across the full spectrum of cases, including those involving paramilitaries. WAVE recalled they had last spoken to the Secretary of State for Northern Ireland in the immediate aftermath of the WMS where he had committed to ‘intensive engagement’ on the issues in the WMS. WAVE however note “We have heard absolutely nothing from him since then.” <http://wavetraumacentre.org.uk/news/wave-legacy-letter-to-mps/>

<sup>58</sup> See [CAJ The Road to the Northern Ireland Troubles \(Reconciliation and Legacy\) Act 2023: A narrative compendium of CAJ submissions](#) 2023. pp 83-85.

information need not be new and can be in the public domain, they will then qualify for the amnesty.

- Set up a new temporary legacy body—the Independent Commission for Reconciliation and Information Retrieval (ICRIR)— to ‘review’ certain legacy cases for a five-year period (after which there will be a blanket amnesty).

44. In May 2022, when introducing the legislation into the UK Parliament, the Secretary of State for Northern Ireland Brandon Lewis expressly linked its purpose to ending investigations against military veterans:

No longer will our veterans, the vast majority of whom served in Northern Ireland with distinction and honour, have to live in perpetual fear of getting a knock at the door for actions taken in the protection of the rule of law many decades ago. With this Bill, our veterans will have the certainty they deserve and we will fulfil our manifesto pledge to end the cycle of investigations that has plagued too many of them for too long.<sup>59</sup>

#### **UN and Council of Europe Response to the Legacy Act**

45. In September 2022 the Council of Europe Committee of Ministers recalled concerns regarding the UK departure from the SHA, noted serious concerns about the lack of formal public consultation on the new legislation; as well as concerns about ECHR compatibility, and the ‘minimal support’ in the legislation.<sup>60</sup> A further Committee of Ministers Decision of December 2022 reiterated such concerns.<sup>61</sup>

46. On 9<sup>th</sup> December 2022, the Council of Europe Commissioner for Human Rights Dunja Mijatović released the report from her visit to the UK in June 2022, and called upon the UK authorities to consider withdrawing the legacy Bill and urged a return to the previously agreed approach (the Stormont House Agreement).<sup>62</sup> The Commissioner observed the widespread opposition to the Bill and raised concerns ‘about the UK government’s lack of genuine consultation with key actors ahead of the publication of the Bill’ and as regards:

...a number of serious issues of compliance with the ECHR, including in relation to the independence and effectiveness of the mechanism for the review of Troubles-related incidents by the Independent Commission for Reconciliation and Information Retrieval (ICRIR), the closure of many

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<sup>59</sup> [Official Record \(Hansard\) House of Commons Tuesday 24 May 2022 Northern Ireland Troubles \(Legacy and Reconciliation\) Bill Volume 715: debated on Column 115](https://www.parliament.uk/hansard/commons/2022/may/24/northern-ireland-troubles-legacy-and-reconciliation-bill-volume-715-debated-on-column-115). The Secretary of State in an article for the Conservative Home publication, went further regarding the purpose of the bill. “*Brandon Lewis: My Northern Ireland legacy plan. No longer will our veterans be hounded about events that happened decades ago.*” <https://conservativehome.com/2022/06/09/brandon-lewis-my-northern-ireland-legacy-plan-no-longer-will-our-veterans-be-hounded-for-about-events-that-happened-decades-ago/>

<sup>60</sup> [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680a831f5](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a831f5)

<sup>61</sup> [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680a93a84..](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a93a84..)

<sup>62</sup> <https://www.coe.int/en/web/commissioner/-/united-kingdom-commissioner-warns-against-regression-on-human-rights-calls-for-concrete-steps-to-protect-children-s-rights-and-to-tackle-human-rights-issues-in-northern-ireland>

important existing avenues for victims to seek truth and justice, and the conditional immunity scheme.<sup>63</sup>

47. On the 15 December 2022, UN Special Procedures Mandate holders Mr. Fabián Salvioli, Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and Mr. Morris Tidball-Binz, Special Rapporteur on extrajudicial, summary or arbitrary executions, issued a further statement calling on the UK to withdraw the legacy Bill. The experts warned that the Bill: “...*fails to comply with the State’s obligation to investigate serious human rights violations committed during the ‘Northern Ireland Troubles’ and denies truth and remedy for victims.*” They held that:

The Bill will substantially hamper victims’ access to remedy before criminal and civil courts for the serious human rights violations and abuses suffered. It would further preclude information recovery and reparations for those victims who have for decades struggled to get justice and redress for the harm endured.<sup>64</sup>

48. The Special Rapporteurs assessed the Immunity Scheme within the Bill as ‘tantamount to a de-facto amnesty scheme’ due to the ‘low threshold required for granting immunity and the lack of review mechanisms’ and urged the UK to withdraw the bill, warning that:

If approved, the Bill would thwart victims’ right to truth and justice, undermine the country’s rule of law, and place the United Kingdom in flagrant contravention of its international human rights obligations.<sup>65</sup>

49. The statement also records regret that the UK authorities failed to respond at all to the previous UN concerns, leading to questions in the UK Parliament.<sup>66</sup>

50. On the 19 January 2023, the UN High Commissioner for Human Rights Volker Türk issued a statement calling on the UK to reconsider its approach to the legacy Bill, raising concerns that the legislation would obstruct the rights of victims to effective remedies and will be incompatible with the UK’s international human rights obligations.<sup>67</sup>

51. In March 2023 a further Decision by the Council of Europe Committee of Ministers reiterated its concerns, and ‘expressed serious concern’ that UK Government

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<sup>63</sup> As above, page 8.

<sup>64</sup> UK: *Flawed Northern Ireland ‘Troubles’ Bill flagrantly contravenes rights obligations, say UN experts* <https://www.ohchr.org/en/press-releases/2022/12/uk-flawed-northern-ireland-troubles-bill-flagrantly-contravenes-rights>

<sup>65</sup> As above.

<sup>66</sup> The [UK opposition tabled a question in the UK Parliament](#) querying why a response has not been issued to the UNSR’s, initially Ministers attributed a delay to an ‘administrative error’ and that a formal UK response would be ‘issued shortly’ along with an apology for the delay. [Reportedly however in July 2023 the UK authorities had still not responded to the UNSR, the OHCHR confirming it had ‘not received any response officially or has been otherwise contacted by the UK Government to discuss the concerns.’](#) The UK authorities would not respond to media questions as to why no response had been sent. The UK opposition said in response: [‘It is disturbing if the government has evaded the UN’s questions, particularly given the global concerns about the legacy bill.’](#)

<sup>67</sup> <https://www.ohchr.org/en/press-releases/2023/01/uk-rights-victims-and-survivors-should-be-centre-legislative-efforts-address>



amendments ‘do not sufficiently allay the concerns’ regarding the legislation.<sup>68</sup> This was reiterated in an Interim Resolution in June 2023.<sup>69</sup>

52. In the same month the Commissioner for Human Rights, Dunja Mijatović, issued a statement raising concerns that the UK amendments:

...leave the fundamental problems with the Bill intact, such as the conditional immunity scheme that would result in impunity for serious human rights violations, the unilateral shutting down of avenues to justice for victims, and questions about the ability of the Independent Commission for Information Recovery to deliver outcomes that would meet human rights standards.<sup>70</sup>

53. The UK authorities nevertheless pressed ahead, and the Legacy Act completed passage in the UK Parliament on the 18 September 2023. The legislation is scheduled to close down the existing Package of Measures by May 2024, with Government amendments at a late stage made to ensure inquests were closed down more quickly. The UK opposition Labour party have committed to repealing the legislation if they come to power in the UK General Election anticipated for late 2024.<sup>71</sup>

54. In December 2023, the Irish Government responded by initiating an Inter-State case against the UK at the European Court of Human Rights.<sup>72</sup>

55. The Inter-State application was lodged by the Government of Ireland on the 17 January 2024 against the UK under Article 33 (Inter-State cases) of the ECHR. The Inter-State application has been registered under no. 1859/24. Ireland contends that provisions of the Act are not incompatible with the ECHR under Article 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment), 6 (right to a fair trial), 13 (right to an effective remedy), and 14 (prohibition of discrimination). Ireland contends the immunity scheme is contrary to Articles 2 & 3; and that Parts 2 and 3 of the Legacy Act replace current mechanisms for information recovery with respect to conflict-related offences (including police investigations and coronial inquests) with a review by the ICIR, contrary to Articles 2 (right to life), Article 3 (prohibition of torture and inhuman or degrading treatment) and Article 13 (right to an effective remedy); and that section 43 of the Act prevents both the initiation of new conflict-related civil actions before the courts and the continuation of civil actions not commenced before 17 May 2022, contrary to Article 6 (right to a fair trial) read alone and in conjunction with Article 14 of the Convention (prohibition of discrimination).<sup>73</sup>

56. There are also multiple applications from victims before the Northern Ireland courts, with the NHRI intervention in the case.<sup>74</sup>

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<sup>68</sup> [1459 DH decision in Mckerr group.](#)

<sup>69</sup> [Interim Resolution CM/ResDH\(2023\)148 June 2023](#)

<sup>70</sup> <https://www.coe.int/en/web/commissioner/-/united-kingdom-adopting-northern-ireland-legacy-bill-will-undermine-justice-for-victims-truth-seeking-and-reconciliation>

<sup>71</sup> For further comprehensive legislation on the legacy bill see [CAJ The Road to the Northern Ireland Troubles \(Reconciliation and Legacy\) Act 2023: A narrative compendium of CAJ submissions](#) 2023.

<sup>72</sup> <https://www.gov.ie/en/press-release/82232-statement-by-the-tanaiste-micheal-martin-on-the-government-decision-to-initiate-an-inter-state-case-against-the-united-kingdom/>

<sup>73</sup> [New inter-State application brought by Ireland against the United Kingdom - ECHR - ECHR / CEDH \(coe.int\)](#)

<sup>74</sup> <https://nihrc.org/news/detail/statement-nihrc-intervenes-in-legacy-act-judicial-review>



**The Committee may wish to ask the UK to repeal the Northern Ireland Troubles (Reconciliation and Legacy) Act 2023 and return to the existing peace-process under the Stormont House Agreement.**

**CAJ, February 2024**

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