

***The crisis  
of the Human Rights  
framework of the  
Belfast / Good Friday  
Agreement***

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*Report by the International Jurists Delegation to Ireland  
February 2023*

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# Delegation

## Suzanne Adely



Suzanne is the President of the National Lawyers Guild, the U.S. oldest and largest progressive bar association, and co-chair of their International Committee. She is a member of the bureau of the International Association of Democratic Lawyers and International Law Lecturer. Suzanne has extensive experience in international labour and human rights, in her role as lawyer, labour organiser and activist.

## Urko Aiartza Azurtza



Urko is member of the Gipuzkoa Lawyers Bar. He is a member of the Executive Committee of ELDH. Former Senator in Madrid (2011-2015) from the Basque Country, he is Senior Adviser of the European Institute of Peace (EIP) and fellow of the Centre on Armed Groups. Since 2019 he is the Director of the Olaso Dorrea Foundation and its “TM eLab”, a laboratory of ideas in the Basque Country, where he was born and lives.

## Art Badivuku



Art is member of the executive of the Haldane Society of Socialist Lawyers. He is a trainee solicitor working in public law and civil actions against public authorities based in London. Before being a trainee solicitor, Art worked as a paralegal on both the Grenfell Tower Inquiry and civil claim. Art has previously worked in campaigning roles in migrant rights and the Palestine solidarity movement.



## Professor Bill Bowring



Bill is a Barrister of England and Wales, since 1974, taking many cases at the European Court of Human Rights against Turkey, Russia, and other former Soviet countries. He is a founder in 1992 and an Executive Committee member of the Bar Human Rights Committee, and is International Secretary of the Haldane Society of Socialist Lawyers. He is a Professor of Law at Birkbeck College, University of London, since 2006, teaching International Law and Human Rights. He is Co-President of the European Lawyers for Democracy and Human Rights (ELDH) and is a past Treasurer for 8 years, and Bureau member of the International Association of Democratic Lawyers (IADL).

## Grace Cowell



Grace is a criminal and family law practitioner who frequently represents defendants in serious drugs matters, including large-scale conspiracies. She has particular expertise in defending clients based on their experiences of trafficking and modern slavery. She is an elected member of the Executive Committees of the Criminal Bar Association and the Haldane Society of Socialist Lawyers, which informs her work in the criminal courts. Further to her practice, Grace has written about international humanitarian law, criminal justice and prison law reform for the International Review of Contemporary Law, Socialist Lawyer magazine and the Justice Gap.

## Krish Govender



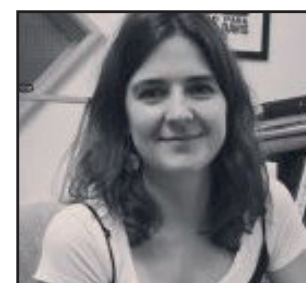
Krish is the former Co-Chair of the Law Society of South Africa (LSSA) and a Member of Judicial Service Commission. He currently serves as both a member and as the Chair of the Ethics Committee of the Legal Practice Council and LSSA Council. He is a National Executive Committee Member of the National Association of Democratic Lawyers of South Africa and a Bureau Member of International Association of Democratic Lawyers.

## Louis Lemkow



Louis is a Professor in the Department of Sociology of the Universitat Autònoma de Barcelona, and member of the Institute of Environmental Science and Technology (ICTA) and the Centre of International and Intercultural Studies of the same university. Louis has published extensively on interdisciplinary topics related to environment, society and sustainability, including health, gender inequalities, work and unemployment; science, technology and society (STS); and peace, conflict and mediation.

## Isabella Mulholland



Izzy is a legal caseworker at the Public Interest Law Centre. She is working with Solace Women's Aid on a project to defend and enforce the rights of those escaping sexual and domestic abuse. The research and casework conducted through this project is aimed at developing strategic litigation to enable survivors to access temporary and permanent housing. Izzy was previously a homelessness advocate worker at a London winter night shelter. She also worked as a housing advisor at a drop-in centre for homeless people in North London where she provided legal casework on housing issues, welfare benefits and healthcare.

## Wendy Pettifer



Wendy has 25 years' experience as a legal aid lawyer working across the private and voluntary sector on housing and destitution cases for migrants. She is a member of the Haldane Society of Socialist Lawyers and the ELDH. Wendy is a solicitor at Hackney Community Law Centre in London.

## Thomas Schmidt



Thomas is a trade-union lawyer from Düsseldorf in Germany. He is the Co-Secretary General of ELDH. Representing also the Association of Democratic Lawyers in Germany (Vereinigung Demokratischer Juristinnen und Juristen e.V. - VDJ).

## Şerife Ceren Uysal



Şerife Ceren Uysal is a human rights lawyer from Istanbul. An executive board member of the Progressive Lawyers Association since 2015, Ceren Uysal was awarded the Dr.Georg Lebiszczyk Prize for Freedom of Speech in Austria in 2016 December. She is researching at the Gender Studies Master Program of the University of Vienna, focusing on gender issues within the context of human rights law, and is currently the co-secretary general of The European Lawyers for Democracy and World Human Rights (ELDH). She is also working as PEN Norway's Legal Adviser on Turkey.

## Introduction

### Peace and human rights in Northern Ireland

The Belfast / Good Friday Agreement ('B/GFA') 1998<sup>1</sup> was signed by the governments of the United Kingdom ('UK') and Ireland but it was also a multi-party peace agreement between the political parties in Northern Ireland ('NI') to seek to end a period of conflict known as 'the Troubles'. At that time, the UK and Ireland were both Member States of the European Union ('EU') and the B/GFA was agreed with specific obligations in relations to international human rights law.

The B/GFA has been augmented through a series of agreements:

- Weston Park Agreement 2001 (UK-Ireland)
- Joint Declaration 2003 (UK-Ireland)
- St Andrews Agreement 2006 (UK-Ireland)
- Hillsborough Castle Agreement 2010 (DUP & Sinn Féin)
- Stormont House Agreement 2014 (UK-Ireland, NI Executive parties)
- Fresh Start Agreement 2015 (UK-Ireland & NI Executive parties)
- New Decade New Approach 2020 (UK-Ireland & NI Executive parties)

It is now three years since the New Decade New Approach (NDNA)<sup>2</sup> deal was agreed, but many of the same unresolved issues remain. The Covid pandemic intervened, but following the May 2022 NI Assembly elections, the Democratic Unionist Party ('DUP') refused to enter the NI Assembly until the Ireland-NI Protocol of the EU-EK Withdrawal Agreement ('WA') is 'scrapped'. Peace and human rights in NI remain perilous in the political vacuum which has re-emerged since the May 2022 NI Assembly elections and fears have been heightened by the uncertainty of the UK Government's legislative agenda impacting human rights in the region and its stated intention to "push the boundaries" of international law.<sup>3</sup>

### International delegation

An international delegation of jurists from Europe and the United States of America ('the Delegation') has reviewed the current state of human rights in NI following a fact-finding mission. They conducted a series of Zoom interviews with human rights organisations, victims' groups and trade unions over the summer of 2022 following the May 2022 NI Assembly elections. All interlocutors were concerned about the non-implementation of key aspects of the human rights framework of the B/GFA.

1 <https://www.gov.uk/government/publications/the-belfast-agreement>

2 <https://www.gov.uk/government/news/deal-to-see-restored-government-in-northern-ireland-tomorrow>

3 <https://theconversation.com/illegal-immigration-bill-does-more-than-push-the-boundaries-of-international-law-201332>



The Delegation believes that there is a concerted attempt by the UK Government to unilaterally dismantle the key human rights plank of the B/GFA, which is the foundation for peace in the region. Such was their concern following the Zoom interviews, the Delegation visited NI between 28 September 2022 and 4 October 2022 on its fact-finding mission to talk to human rights organisations, victims' groups and trade unions to hear their concerns regarding the state of the peace process and human rights. The Delegation also wished to consider the prospects for human rights being implemented in the future in NI and planned its fact-finding mission around the 'Ireland's Future' conference in Dublin on 1 October 2022.

## About the Delegation

The Delegation included prominent international lawyers from the European Lawyers for Democracy and Human Rights ('ELDH') and the International Association of Democratic Lawyers ('IADL'). They undertook the fact-finding work pro bono and travelled to NI at their own expense without external funding or party-political affiliation. The majority of members of the Delegation were from the ELDH.

The ELDH is a progressive, non-profit organisation, which currently unites lawyers from 22 European countries, who join forces to struggle for, inter alia, human rights and civil liberties; social and economic rights; peace and democracy; and the rights of migrants and refugees; the right of peoples to self-determination. The ELDH tries to achieve its goals by conferences, trial observations and human rights missions, as well as the preparation of legal opinions on issues of international law and human rights as well as on European law. The ELDH cooperates with the IADL and other progressive legal and human rights organisations such as the European Democratic Lawyers (AED-EDA), the European Centre for Constitutional and Human Rights (ECCHR), trade unions, universities and the European Network Against Racism (ENAR).

Since IADL's founding in 1946 in Paris, IADL members have participated in the struggles against the violation of human rights of groups and individuals and threats to international peace and security, legal issues under international law. From its inception, IADL members throughout the globe have protested racism, colonialism, and economic and political injustice wherever they interfere with legal and human rights, often at the cost of these jurists' personal safety and economic well-being. IADL campaigns have led to changes in international humanitarian law like the universal acceptance of the importance of the right to self-determination and the protection of national human rights in arguments before UN bodies and international courts in a reinterpretation of the doctrine of "domestic jurisdiction," formulated in Article 2, paragraph 7 of the UN Charter, a former barrier to international action in support of those basic rights.

This global evolution led by IADL lawyers has made possible United Nations' intervention in situations of massive and institutionalised human rights abuses beginning with UN action in the 1960's regarding South Africa's apartheid policies which had divested all human and legal rights from the black majority. Through their efforts IADL lawyers have helped to establish fundamental concepts of international and domestic law including the declaration of apartheid as a crime against humani-

ty; the provision of prisoner of war status to combatants from liberation movements; prohibition of the use of unilateral force by one nation against another; the recognised legal right of peoples to self-determination; the recognised legal rights of women and children; and the almost universal public policy acceptance that there should be legal remedies for racial, religious, economic and cultural discrimination and persecution.

As observers at political trials of defendants like Angela Davis, the Turkish Poet Nazim Hikmet, Jomo Kenyatta of Kenya, Abane Ramdame, Nelson Mandela, and numerous members of ANC, SWAPO, and PLO accused of crimes against the state, IADL lawyers and jurists have focussed the light of international scrutiny on efforts to silence dissidents. As activist lawyers, they have brought challenges to violations of individual and group rights before the International Court of Justice, the United Nations Court in the Hague, the European Court of Human Rights and the InterAmerican Court of Human Rights.

By the beginning of the 21st century, more than fifty years after the founding of the IADL, profound changes in law and international expectations have altered the ways IADL members practise their professions and exercise their political beliefs. Political events and contemporary human rights struggles throughout the world require legal activism to continue into this century. Committed to the principle of equality among peoples, the rights of all peoples to self-determination, the elimination of imperialism and colonialism and the peaceful settlement of international disputes, the members of IADL who share these objectives include individual lawyers and judges and regional and affiliated national lawyer and jurist associations from over ninety countries.





The Delegation’s focus

The Delegation established from their interviews that the UK’s legislative agenda, at the time of their visit, included the following Bills which are problematic for human rights and the peace process in NI:

- 1. Northern Ireland Troubles (Legacy and Reconciliation) Bill (‘the Legacy Bill’).<sup>4</sup>
- 2. Human Rights Act 1998 reform (‘the Bill of Rights Bill’).<sup>5</sup>
- 3. Northern Ireland Protocol Bill (‘the Protocol Bill’), which at the time of writing is to be dropped in accordance with the Windsor Framework agreement between the UK and EU.<sup>6</sup>

This report starts by briefly considering the B/GFA and reflecting upon the impact of Brexit. It then considers the Legacy Bill, the Bill of Rights Bill, and the NI Protocol Bill before considering the recent Windsor Framework and further worrying developments for human rights in the UK since their visit occurred in September and October 2022 in the form of the Retained EU Law (Revocation and Reform) Bill and the Illegal [sic] Migration Bill. They then set out thematic concerns that emerged from the interviews: the general diminution in human rights; women’s rights; migrant rights; and the dangers for human rights defenders, including lawyers.

This analysis leads to serious concerns regarding the peace process and breaches of international law and human rights. The legacy of NI’s Troubles intersects with the present state of crisis and leads to the necessary consideration of the constitutional possibilities that relate to Ireland’s future. The details of interviews with human rights groups, victims’ groups and trade unions conducted by the Delegation are listed in the Appendices.

The Belfast / Good Friday Agreement

The B/GFA contains the following commitment to the European Convention on Human Rights (ECHR):

“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.”

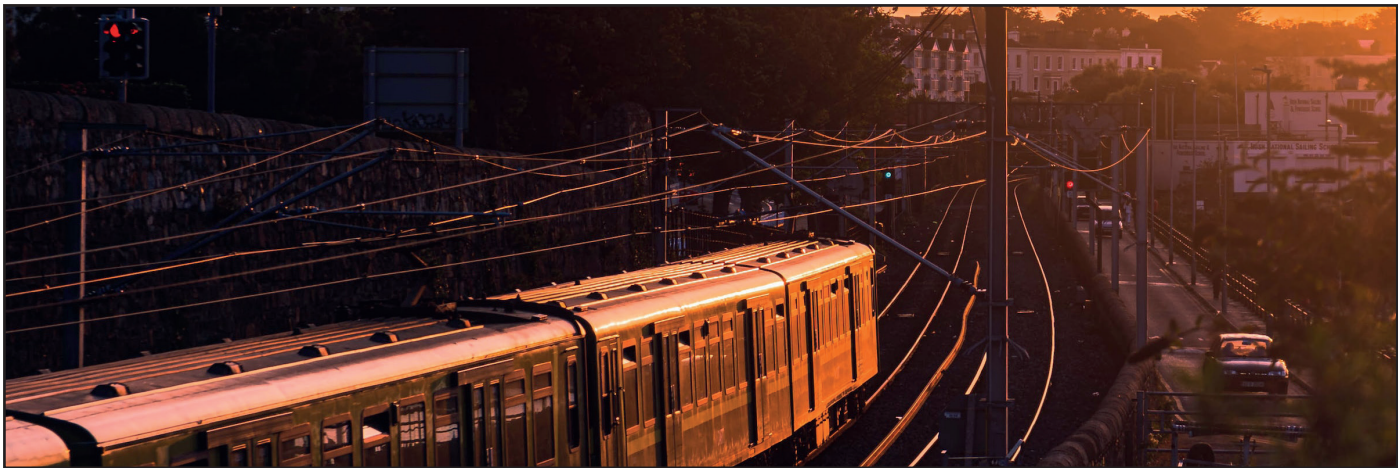
There are provisions in the Human Rights Act (HRA) 1998 and NI Act 1998 taking forward these commitments. The incorporation of the ECHR in NI law has been one of the major achievements and safeguards further to the B/GFA. However, the present UK Government has introduced the Bill of Rights Bill, which diminishes the incorporation of the ECHR in UK (and therefore NI) law.<sup>7</sup> Under

4 <https://bills.parliament.uk/bills/3160>  
5 <https://bills.parliament.uk/bills/3227>  
6 <https://bills.parliament.uk/bills/3182>  
7 The Overseas Operations (Service Personnel and Veterans) Act 2021(which the Westminster Joint

Article 2 of the Ireland-NI Protocol to the UK-EU Withdrawal Agreement and its domestic implementation legislation, the UK has entered into a legally binding commitment there will be no diminution of certain B/GFA rights (including the duties to incorporate the ECHR) as a result of Brexit.<sup>8</sup> However, the use of the ‘Petition of Concern’ in the NI Assembly was to be tied to a process whereby a Special Committee would scrutinise the legislation/measure in question for compliance with the ECHR. This has not happened in practice.

The B/GFA provided for the UK to ‘actively consider’ ratifying the European Charter for Regional and Minority Languages (‘ECRML’) and for Ireland to ratify the Framework Convention for National Minorities (‘FCNM’),<sup>9</sup> two key treaties of the Council of Europe. Ireland also committed to equivalence to human rights protections “as will pertain in Northern Ireland” including specific reference to incorporation of the ECHR. Ireland ratified the FCNM in 1999 and the UK ratified the ECRML in 2001 (and had already ratified the FCNM). The European Convention on Human Rights Act 2003 gave the ECHR a level of domestic effect in Irish law. The commitment to a minimum benchmark of equivalence in the legislative framework of rights is significant. The two human rights Commissions mapped the status of equivalencies in their advice on a Charter of Rights in 2011.<sup>10</sup> This concept may gain further significance in the context of current conversations about preparing for possible constitutional change, an issue which the Delegation inevitably considered in its conclusion and recommendations.

The Delegation heard concerns about the need for further reforms to the ‘Petition of Concern’ mechanism. It considers that further beneficial reforms to the Petition of Concern mechanism agreed by a majority of parties at the time of NDNA could include the involvement of the NI Human Rights Commission taking on an adjudicatory role over the validity of Petitions, especially as the incorporation of the ECHR into NI law through the HRA 1998 is a core safeguard within the B/GFA was



Committee on Human Rights has found “breaches the UK’s international legal obligations under international humanitarian law, human rights law and international criminal law.”) – limits both ‘direct access to the courts’ and ‘remedies for breaches’ in relation to proceedings for past overseas war crimes in the NI Courts. During the passage of the Covert Human Intelligence Sources (Criminal Conduct) Act 2021, and in Court Government also argued that the HRA did not apply to criminal conduct by its agents/informants.

8 <https://www.gov.uk/government/publications/protocol-on-irelandnorthern-ireland-article-2>  
9 <https://caj.org.uk/wp-content/uploads/2021/04/A-mapping-exercise-Mar-21.pdf>  
10 <https://www.ihrec.ie/a-charter-of-rights-for-the-island-of-ireland/>

expressly linked to the Petition of Concern.<sup>11</sup> Furthermore, the Bill of Rights for NI was also a core B/GFA safeguard over the exercise of Executive and Legislative power, which is also essential to the functioning of the Petition of Concern. The Delegation considers that its lack of implementation has contributed to the instability of the B/GFA institutions. The effectiveness of the Strand 1 institutions could be secured through reverting to the intention of the B/GFA of safeguards linked to objective human rights and equality standards, rather than the exercise of political vetoes by parties opposed to the realisation of international human rights standards.

## A Note on Brexit

Brexit has had a major impact on the debate about Ireland's future constitutional arrangements. This was a recurrent theme in the interviews conducted by the Delegation and from the documentation we have reviewed relating to the UK Government's commitment to equality and human rights after Brexit. The UK Government has committed, in Article 2 of the Protocol, to ensuring that the protections currently in place in NI regarding the rights, safeguards, and equality of opportunity provisions, set out in the chapters of the same name in the B/GFA, are not reduced because of Brexit.

The UK Government also committed in the Protocol to ensuring that certain equality laws in NI will keep pace with any future changes to the EU equality laws which are set out in Annex 1 to the Protocol. This commitment is a recognition of the importance and centrality of rights and equality protections in the B/GFA and of the fact that this Agreement has underpinned the peace process. This commitment applies to NI so that everyone who is protected by NI law is covered by this commitment irrespective of whether the law has been passed by the NI Assembly or the UK Parliament.

The commitment in Article 2 of the Protocol applies to the rights, safeguards, and equality of opportunity provisions set out in the chapter of the same name in the B/GFA, which include:

- The right of free political thought
- The right to freedom and expression of religion.
- The right to pursue democratically national and political aspirations.
- The right to seek constitutional change by peaceful and legitimate means.
- The right to freely choose one's place of residence.
- The right to equal opportunity in all social and economic activity regardless of class, creed, disability, gender or ethnicity.
- The right to freedom from sectarian harassment.
- The right of women to full and equal political participation.
- The right of victims to remember as well to contribute to a changed society.
- Respect, understanding and tolerance in relation to linguistic diversity.
- The need to ensure that symbols and emblems are used in a manner which promotes mutual respect rather than division.

<sup>11</sup> We gather that it was agreed by everyone but the DUP - NDNA committed to some reform but records most parties wanted to go further.

This commitment is binding on the UK Government and Parliament, and the NI Executive and the Assembly, as a matter of international law. All the provisions in the Withdrawal Agreement, including the UK Government's commitment under Article 2 of the Protocol, are now contained in UK law.

To ensure that the UK Government meets its commitment under Article 2 of the Protocol, it created a 'dedicated mechanism' comprising of the Equality Commission of NI and the NI Human Rights Commission. The Commissions have been given additional powers and responsibilities to ensure that the UK Government's commitment is met. They are responsible for providing advice to government and monitoring, supervising, enforcing and reporting on the ongoing implementation of this commitment. The Commissions will also work with the Irish Human Rights and Equality Commission (IHREC) to provide oversight of, and reporting on, rights and equalities issues falling within the scope of the commitment that have an island of Ireland dimension. Further, the Equality Commission, the NI Human Rights Commission, and the Joint Committee of NI Human Rights Commission and IHREC can directly raise matters of relevance to how the commitment is being implemented with the Specialised Committee on the Protocol.

## The Legacy Bill

According to the UK Government, the purpose of the Legacy Bill is purportedly to address the legacy of the NI Troubles which continued from 1966 to 1998 ('the Troubles') and to promote reconciliation by establishing an Independent Commission for Reconciliation and Information Recovery (ICRIR), limiting criminal investigations, legal proceedings, inquests and police complaints, extending the prisoner release scheme in the Northern Ireland (Sentences) Act 1998, and providing for experiences to be recorded and preserved and for events to be studied and memorialised, i.e., a government-controlled history preservation scheme. The Delegation's main points of concern regarding the Legacy Bill are:

- The ICRIR, which will take over all of the investigatory functions currently exercised by the Police Service of Northern Ireland (PSNI)'s Historical Enquiries Team / Legacy Investigations Branch and the Police Ombudsman in relation to Troubles-related crimes.<sup>12</sup> This means that there will be a prohibition of existing criminal investigations, inquests, and police complaints. This prohibition is problematic because the ICRIR will not meet the procedural obligation under Articles 2 and 3 of the European Convention on Human Rights (ECHR) due to: the limitations on the caseload of the ICRIR; the absence of an obligation on the state to undertake investigations; the lack of powers to carry out effective investigations; its lack of independence; the omission of provisions for public scrutiny of its operations; and the limited role for families of victims.
- Immunity from prosecution by a panel of the ICRIR, a decision which may only be revoked if false statements are given. The ICRIR will only provide information for prosecutors as it

<sup>12</sup> Legacy Investigations Branch took over when the Historical Enquiries Team stood down in 2015.  
- <https://www.psni.police.uk/legacy-investigation-branch>.



considers appropriate.

- Memorialisation of the Troubles by a state-appointed advisory forum.

The Delegation heard powerful evidence from the victims' group, WAVE, regarding the level of trans-generational trauma suffered by people in NI. In 2021, WAVE had service users between 15 and 96, and many of the younger service users are dealing with the trauma of their relatives dying or being subject to torture in some cases decades before they were born. Anecdotal evidence was shared as part of their presentation, which included an example of how a grandparent always ensured that her children and grandchildren slept in houses that had a metal gate at the bottom of their stairs – a reflection of the fact that her partner was killed whilst in bed with her next to him by paramilitaries many years ago. As well as this, many younger people have been in touch with WAVE making inquiries about their parents and grandparents who were killed during the Troubles. WAVE had around 3,500 service users last year.

The Legacy Bill has been an effective re-traumatiser, with the Bill and the discussions around it bringing back lots of bad memories for many involved in the Troubles in NI. WAVE have been campaigning against the Legacy Bill, and described the legacy proposals as “abhorrent for the bereaved”. The Legacy proposals, panned by human rights groups universally, has been described by WAVE as a “perpetrator protecting” Bill, which goes against the B/GFA and the rule of law. WAVE highlighted the fact that under the Legacy Bill, murder would be treated differently if committed in Belfast than in London during the same time period – the same murder in Belfast would see no investigations and no accountability.

WAVE suggested that for the Legacy Bill to properly deal with the legacy of the Troubles, it would need to include a right to an investigation under Article 2 of the ECHR, with clear conditions for the amnesty, and with sanctions to accompany it. WAVE analysed the impact that long term trauma has had to the physical and mental health of people in NI. Data seen by WAVE and compared to national averages across the island of Ireland and Britain has shown that lots of health issues are overrepresented in areas which saw high level of violence during the Troubles, ranging from cardiovascular diseases to cancer. In some areas, ‘the deaths are clotted thick’. Meanwhile, statutory services did not specifically address the Troubles. Instead, statutory services completely ignored the Troubles and instead treated NI as if it were another region of the UK, “like Kent or Liverpool.”

The continuing presence of paramilitaries in communities in NI remains an issue which contributes to trauma of survivors. Paramilitaries still have significant control over communities and continue to let them know that they exist. WAVE highlight how there is an intimacy to the violence in the North – “it is a small place, and communities know each other well.” WAVE’s analysis was supported by the campaign group, Relatives for Justice who also maintained that the Legacy Bill should be scrapped and was not fit for purpose.

On the basis of evidence it heard from WAVE and Relatives for Justice, as well as international human rights law, the Delegation believes that implementation of the Legacy Bill will mean that the UK Government will violate international law. Under the ECHR and the HRA 1998, the UK must ensure

that the Government investigates potentially unlawful killings and other serious human rights violations. The NI Human Rights Commission (‘NIHRC’) – which advises the UK government on human rights issues – states that, ‘the Bill is incompatible with Articles 2 (right to life) and 3 (freedom from torture) of the European Convention on Human Rights (ECHR). This Bill is fatally flawed, it is not possible to make it compatible with the ECHR.’<sup>13</sup>

Articles 2 and 3 of the ECHR are human rights which cannot be derogated from. Despite this, the UK government is pressing ahead with its legislative agenda, making only cosmetic changes during the drafting process to – unsuccessfully – address the UK’s obligations under the ECHR. In August 2022, the Council of Europe’s Human Rights Commissioner stated that, “...by introducing the Bill, the UK government has embarked on a course of action that runs a very significant risk of eventually being found by domestic courts and/or the European Court of Human Rights not to be compliant with the Convention.” The Delegation believes that the legislation, if passed, would not be compatible with the ECHR.<sup>14</sup>

Powers over most of the criminal justice system in NI are matters resting with the NI Executive and Legislature, and not with the Westminster Parliament. The NI Justice Minister and Department of Justice exercise competence over these areas. Therefore, much of the content of the Legacy Bill falls within the competence of justice powers transferred to NI. As the CAJ have pointed out, the UK Parliament does retain a parallel legislative competence for NI, but by constitutional convention (the ‘Sewell Convention’) is not to legislate on transferred matters without the consent of the NI institutions.<sup>15</sup> The exception to this in the B/GFA is when such legislation is required to meet the UK’s international obligations. This is not the case with the Legacy Bill, especially as it runs contrary to the UK’s treaty(-based) obligations, including the ECHR.

Accordingly, under constitutional convention, the Legacy Bill required consultation with the Justice and other NI Ministers and a Legislative Consent Motion from the NI Assembly. On this occasion, the UK Government has bypassed each of these processes. There was also no public consultation or meaningful process of engagement on the draft legislation before its introduction in the UK Parliament on 17 May 2022. In doing so, the UK Government has also violated international law, as this course of action also breaches sections 32 and 33 of Strand One of the B/GFA.<sup>16</sup> In addition to failing to properly consult with civil society in NI, the UK Government has failed to take into account the views of the Irish government, which is the co-guarantor of the B/GFA and a party to this international agreement.<sup>17</sup>

<sup>13</sup> <https://committees.parliament.uk/writtenevidence/109473/html/>

<sup>14</sup> See <https://caj.org.uk/publications/submissions-and-briefings/com-sub-jan-23/>

<sup>15</sup> <https://caj.org.uk/wp-content/uploads/2021/04/A-mapping-exercise-Mar-21.pdf>

<sup>16</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1034123/The\\_Belfast\\_Agreement\\_An\\_Agreement\\_Reached\\_at\\_the\\_Multi-Party\\_Talks\\_on\\_Northern\\_Ireland.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1034123/The_Belfast_Agreement_An_Agreement_Reached_at_the_Multi-Party_Talks_on_Northern_Ireland.pdf)

<sup>17</sup> <https://www.dfa.ie/news-and-media/press-releases/press-release-archive/2022/june/ireland-welcomes-decision-by-council-of-europe-on-northern-ireland-legacy-issues.php>



The Delegation believes that Ireland would be entitled to bring a claim for breach of international law to the International Court of Justice against the UK government under Article 36(2) of the Statute of the Court.

The Delegation does not believe that the changes made by the UK government to its Command Paper of 2021 purporting to address the UK’s obligations under the ECHR are credible or will save the Legacy Bill from violating international human rights law.<sup>18</sup> The three main changes in the Legacy Bill from the Command Paper are:



1. the abandonment of a blanket unconditional amnesty in favour of a system of ‘conditional immunity’;
2. expansion of the limited powers of the new legacy body by adding in the possibility of the use of police powers by the ICIR; and
3. an amendment to the prohibition of legacy inquests and civil claims which will allow claims and inquests that have substantially commenced prior to the Bill to continue.<sup>19</sup>

<sup>18</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1002140/CP\\_498\\_Addressing\\_the\\_Legacy\\_of\\_Northern\\_Ireland\\_s\\_Past.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002140/CP_498_Addressing_the_Legacy_of_Northern_Ireland_s_Past.pdf)

<sup>19</sup> See <https://caj.org.uk/publications/submissions-and-briefings/com-sub-jan-23/>

These changes have subsequently also been criticised by the Council of Europe’s Human Rights Commissioner in August 2022,<sup>20</sup> and the Committee of Ministers met again on 20-22 September 2022 and in March 2023 to consider this report.<sup>21</sup>

The Delegation believes that the Irish Government should commit to taking an inter-state case in the European Court of Human Rights against the UK Government’s Legacy Bill if it becomes law. The Delegation therefore believes that the Legacy Bill should be withdrawn in its entirety to maintain the integrity of the B/GFA, the peace process, and the rule of law in NI and, indeed, in the UK as a whole.

## The Bill of Rights Bill

Under the heading ‘UK legislation’ of the ‘Human Rights’ strand of the B/GFA, it states that,

“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.’

On 22 June 2022, the UK Secretary of State for Justice, Dominic Raab, published the Bill of Rights Bill but it will now be subject to revision.<sup>22</sup> The intention of the UK Government in any event is to repeal and replace the Human Rights Act (‘HRA’) 1998, which gives effect in UK law to the rights and freedoms in ECHR, as per the UK government’s international law obligations under the B/GFA.

The Bill of Rights Bill’s stated purpose was to “[clarify and re-balance] the relationship between courts in the United Kingdom, the European Court of Human Rights and Parliament” and to give primacy to decision-making by Parliament, rather than any court, in instances where competing rights and interests are at stake (clause 1(2)). The proposed Bill of Rights Bill would have had serious implications for NI, as it would have imposed additional barriers to victims of the Troubles in accessing justice for crimes committed during the conflict, while also undermining the B/GFA obligation for the UK to create access to a court and to a remedy for breaches of the ECHR in NI.

Although the Truss administration paused the legislative process of the Bill of Rights Bill, it now appears to be back on the table in an unaltered form, following Dominic Raab’s reappointment to the Justice Secretary position. The Delegation is concerned that the proposed Bill of Rights Bill (if enacted) will have serious implications for NI, as it will impose additional barriers to victims of the Troubles in accessing justice for crimes committed during the conflict, while also undermining the B/

<sup>20</sup> <https://rm.coe.int/submission-by-the-council-of-europe-commissioner-for-human-rights-un-de/1680a7b336>

<sup>21</sup> <https://www.coe.int/en/web/cm/-/1443rd-human-rights-meeting-of-the-ministers-deputies-20-22-september-2022-> ; <https://caj.org.uk/publications/submissions-and-briefings/com-sub-jan-23/>

<sup>22</sup> <https://www.bbc.co.uk/news/uk-politics-62818286>



GFA obligation for the UK to create access to a court and to a remedy for breaches of the ECHR in NI. The Delegation considered that Bill of Rights Bill may be more accurately described as being a ‘rights removal’ Bill, which is a dangerous position for any government to take, especially one that is a member of the Council of Europe.

## The Northern Ireland Protocol Bill

Human rights obligations under the Ireland-Northern Ireland Protocol (‘the Protocol’)

The Protocol is part of the UK’s Withdrawal Agreement with the EU and set out special arrangements for NI, so that the island of Ireland remained border-free, thereby enabling the smooth functioning of the all-island economy and safeguarding the B/GFA.<sup>23</sup> Under the heading ‘UK legislation’ of the ‘Human Rights’ strand of the B/GFA, it states that, “The British Government will complete incorporation into NI 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.” Overall, the Protocol has three main objectives:

- 1.To preserve the integrity of the EU’s Single Market, ensuring that Ireland’s relations with the rest of the UK remained significantly unaffected.
- 2.To prevent the creation of a hard border between Ireland and NI.
- 3.To protect the B/GFA in “all its dimensions”.<sup>24</sup>

Under Article 2 of the Protocol, the UK Government agrees to ensure “no diminution of rights, safeguards and equality of opportunity” in NI. This provision augments the obligations set out in Section 6 of the B/GFA and many of the EU’s anti-discrimination laws. The Protocol Bill (now being withdrawn because of the Windsor Framework – see below) instead risked removing fundamental rights protections in NI, and undermining the B/GFA, which obliged the UK government to incorporate ECHR into NI law, as subsequently enacted through the HRA 1998. The ECHR and the HRA 1998 are essential in allowing individuals to directly challenge laws and policies which infringe their human rights before the courts. While commentators rightly point to the ECHR as a key source of human rights protection in NI, EU law has also been instrumental. For example, European Directives on equal treatment in employment have been particularly impactful in NI, given that this issue was a particular source of conflict prior to the Troubles. While these Regulations and Directives have proven invaluable in advancing equality and anti-discrimination law in NI, the Delegation believes that UK Government risked these protections through its cynical use of the Protocol Bill in negotiations with the EU.

As part of protecting the B/GFA, the Protocol aims to ensure that there is “no diminution of rights, safeguards, or equality of opportunity” as set out in the part of the 1998 Agreement that deals with

<sup>23</sup> <https://commonslibrary.parliament.uk/research-briefings/cbp-8713/>

<sup>24</sup> Article 1(3) of the Protocol also references conditions for continued north-south cooperation, “This Protocol sets out arrangements necessary to address the unique circumstances on the island of Ireland, to maintain the necessary conditions for continued North-South cooperation, to avoid a hard border and to protect the 1998 Agreement in all its dimensions”.

these issues. No diminution means that the rights people in NI had before the UK left the EU (31 December 2020) cannot be reduced because of Brexit; rights can only stay the same or advance, they cannot regress. However, the Protocol Bill sought to roll back on the extent of dynamic alignment, which remains a concern regarding the UK’s adherence to human rights standards despite the Protocol Bill no longer being pursued. The future status of EU equality and human rights law and jurisprudence is of vital importance to NI because it is these evolving European standards that the Protocol requires should be incorporated into NI’s domestic law.

Additionally, the Delegation noted that Schedule 3 of the EU-UK Withdrawal Agreement confers new functions on the NIHRC and the Equality Commission to enable each to act as part of the ‘dedicated mechanism’, to monitor, advise, report on, and enforce the UK’s adherence to its commitment that there will be no diminution of rights, safeguards, or equality of opportunity in NI as a result of the UK’s exit from the EU.<sup>25</sup> Both Commissions expressed concerns that the Protocol Bill provided incomplete protection for the human rights and equality aspects of the Protocol and they recommended that the interpretation and enforceability of Article 2 of the Protocol were not weakened.<sup>26</sup>

As further explained below, the Delegation believes that there remains a serious risk that the provisions of Article 2 of the Protocol will be undermined by UK Government in its implementation of the Protocol. We see it as essential to the protection of human rights in NI that the jurisdiction of the CJEU remains to oversee the implementation of the Protocol, especially Article 2, at a time when the UK Government has expressed an intention to reduce or remove human rights protections – and even suggested the possibility of withdrawing from the ECHR.<sup>27</sup>

## Breaching international law

It should not be forgotten in the aftermath of the Windsor Framework that the UK Government, in its statement summarising its legal position on the Protocol Bill,<sup>28</sup> justified its breach of international law on the grounds of “necessity”, which is recognised in Article 25 of the Articles on Responsibility of States for Internationally Wrongful Acts (2001) (‘the ASR’).<sup>29</sup> For the UK Government to have been able to successfully claim necessity, it had to establish that:

- the Bill was “the only way” to proceed;
- implementation of the Protocol constituted a “grave and imminent peril” to an essential interest of the UK;
- the Bill did not “seriously impair” the essential interests of the EU;

<sup>25</sup> [https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement\\_en](https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement_en)

<sup>26</sup> <https://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/DMU/DMU-HoLSubComm-ProtocolInquiry.pdf>

<sup>27</sup> <https://www.itv.com/news/2022-06-14/immoral-rwanda-flight-set-to-take-off-after-legal-challenge-fails>

<sup>28</sup> <https://www.gov.uk/government/publications/northern-ireland-protocol-bill-uk-government-legal-position/northern-ireland-protocol-bill-uk-government-legal-position>

<sup>29</sup> [https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_6\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf)

- the Protocol does not “exclude the possibility” of advancing necessity (Article 16 of the Protocol is clearly designed to be used in an emergency situation. Given that a bespoke mechanism exists to deal with urgent problems arising under the Protocol, its presence is designed to exclude the possibility of an additional defence of necessity as a mechanism to deal with urgent problems); and
- the UK has not “contributed to the situation of necessity”.

The UK Government’s legal position in June 2022 referred to Article 16 of the Protocol as setting out an additional way in which it could act to safeguard its interests. This opinion concluded by stating that the Protocol Bill was “without prejudice to the UK’s right to take measures under Article 16 of the Protocol”. Therefore, it was a contradiction to state that this Bill was the “only way” to resolve the problem at the same time as stating that the UK Government reserved the right to use the Article 16 procedure to resolve the problem. Negotiation with the EU was clearly another way to resolve these issues, and this is what transpired.

Similarly, from the perspective of international law, the antipathy of some Unionists in NI to the Protocol and a refusal by a minority of elected politicians to form an Executive or Assembly does not constitute a “grave and imminent peril” to an essential interest of the UK – as the UK Government alleged. On the contrary, it was clear to the Delegation that the Protocol Bill would have led the UK to “seriously impair” the essential interests of the EU. This was especially the case with the existence of a formal and bespoke mechanism within the Protocol for dealing with these kinds of emergencies implicitly precluding the possibility of also advancing necessity outside the terms of the Protocol. Again, even if the UK Government could have successfully claimed that a situation of necessity existed, the Delegation believes that it “contributed to the situation of necessity” in the first place by refusing to accept the terms of the Protocol which it negotiated, and then acting unilaterally to legislate for its preferred interpretation through the Bill. As it happens, in March 2023, the UK and the EU agreed the Windsor Framework, which means that the UK now intends to withdraw the Protocol Bill, but the UK Government clearly acted in bad faith during the negotiations with the fallback intention to breach international law.

## The Windsor Framework

The Windsor Framework (WF) is an international arrangement between the UK and the EU under which the parties commit to binding international law obligations, including changes to the Protocol itself. The UK and EU have made clear in the Political Declaration accompanying the Windsor Framework that the amended Protocol is governed by the Vienna Convention on the Law of Treaties. The WF addresses the UK Government’s position as set out in the July 2021 Command Paper.

The UK Government maintains that the WF respects the Act of Union and the B/GFA and deals with the everyday issues people and businesses in NI had faced as a result of the operation of the Protocol. It claims that the proposed measures are fully aligned with and advance the UK’s commitments and responsibilities under the B/GFA and the Act of Union, including protecting the economic rights of the people of NI and ensuring just and equal treatment for the identity, ethos and aspirations of

both predominant communities.

Given the terms of the WF, the UK Government stated that there would now be no legal justification for enacting the Protocol Bill. However, the UK’s legal position in February 2023 is that its assessment that the WF is compatible with international law is “without prejudice to any future situation which may arise, or the UK’s rights under international law to protect its interests.”<sup>30</sup> The Delegation believes that the UK Government cannot be trusted to respect international law and this has serious implications for human rights in NI, as can be seen from the subsequent introduction of the Illegal [sic] Migration Bill in March 2023.

## The Illegal [sic] Migration Bill

In March 2023, the UK Government published the Illegal [sic] Migration Bill, which purports to be a, “Bill to make provision for and in connection with the removal from the United Kingdom of persons who have entered or arrived in breach of immigration control; to make provision about detention for immigration purposes; to make provision about unaccompanied children; to make provision about victims of slavery or human trafficking; to make provision about leave to enter or remain in the United Kingdom; to make provision about citizenship; to make provision about the inadmissibility of certain protection and certain human rights claims relating to immigration; to make provision about the maximum number of persons entering the United Kingdom annually using safe and legal routes; and for connected purposes.”

Among the proposed measures are:

- A new legal duty on the Home Secretary to remove “as soon as reasonably practicable” anyone who has come to the UK on a small boat or similar means either back to their home country, to Rwanda or to another “safe third country”.<sup>31</sup>
- Make all asylum claims from small boat arrivals inadmissible. Anyone crossing the channel will be deemed to have entered the country illegally and would be detained, their right to remain in the country to have their case heard would be removed, and they would be permanently banned from returning.
- Raise the threshold for modern slavery claims.
- The opening of new detention centres.
- New ‘safe and legal routes’ to claim asylum, with numbers capped by Parliament and voted on annually by both Houses.
- A ‘rights brake’, radically restricting how human rights laws may be used to fight deportation.

30 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1141823/UK\\_Government\\_Legal\\_Position\\_\\_The\\_Windsor\\_Framework.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1141823/UK_Government_Legal_Position__The_Windsor_Framework.pdf)

31 The duty in clause 2 is not qualified to small boats – it is any ‘unlawful’ entry into the ‘UK’ post march 2023 from a ‘safe country’ – so an issue specific to NI is that this includes a plethora of persons crossing the land border: see <https://caj.org.uk/publications/submissions-and-briefings/briefing-note-the-illegal-migration-bill-impacts-on-the-land-border/>



- Potential restrictions on judicial review.
- Retrospective application, so the Bill will apply from the day of first reading.

The UNHCR, the UN Refugee Agency, has stated that it is “profoundly concerned” by the Illegal [sic] Migration Bill and that, in its current form, the Bill compels the Home Secretary to deny access to the UK asylum system to those who arrive irregularly. It concludes that rather than being provided with protection, these asylum-seekers would instead be subject to detention in the UK, while arrangements are pursued to remove them to another country.<sup>32</sup> Therefore, the interaction of this Bill with the HRA 1998 and ECHR greatly concerns the Delegation and we will have to wait to discover exactly how the UK Government intends to “push the boundaries of international law” in the Bill. Significantly, the Bill carries a rare section 19(1)(b) HRA statement on its cover, asserting that the UK Government is unable to state that the provisions of the Bill are compatible with the Convention rights, but they intend to proceed anyway.

The Bill of Rights Bill proposed to do away with section 19, with the Ministry of Justice’s consultation response saying that “the stigma attached to the making of a section 19(1)(b) statement risks effectively operating as a veto on innovative policy-making”. While the UK Government has recently changed its tone somewhat on the ECHR, with Prime Minister Sunak reassuring the House of Commons that “the UK is and will remain a member of the ECHR”, the Delegation is concerned about



<sup>32</sup> <https://www.unhcr.org/uk/news/press/2023/3/6407794e4/statement-on-uk-asylum-bill.html>

what may come next. with what is being set up, and the British right-wing papers are filled with veiled threats. The Sun quotes a ‘Whitehall insider’ saying that if Strasbourg blocks the plans “probably the next step is we are out”.<sup>33</sup> The Telegraph has a source calling the Bill “the best last bet on what can be done consistent with the ECHR”.<sup>34</sup> This is a groundswell of opinion that is likely to get louder and louder as this Illegal [sic] Migration Bill progresses and the UK moves towards an election in 2024 and, should the UK withdraw from the ECHR, the EU will be entitled to retaliate.<sup>35</sup>

## The Retained EU Law (Revocation and Reform) Bill

The Delegation has further concerns regarding the implications of the Retained EU Law (Revocation and Reform) Bill (the Revocation Bill) for the UK’s constitutional order generally, and international law. In particular, there are serious implications for democracy and the rule of law of the ‘sunset’ provisions in clauses 1 to 3 and the ministerial powers given (particularly in clauses 15 & 16); and the possible impacts on the UK’s international obligations and devolution settlements, including NI. The Delegation acknowledges that UK governance rests on constitutional principles, including parliamentary sovereignty (which includes the accountability of the executive to Parliament), the separation of powers and the rule of law. However, the Delegation believes that the Revocation Bill, if passed in its current form, would violate all those principles particularly by transferring Parliament’s principal role, law-making, into the hands of Government ministers who will be able to carry this out virtually free of the effective scrutiny of either the electorate or of other members of Parliament (or, significantly for NI, the devolved legislatures).

The UK Government’s claim that the Revocation Bill promotes sovereignty is, in the view of the Delegation, hollow and disingenuous, as it is an undemocratic example of Parliament relinquishing its key responsibilities by virtue of the scale of the retained EU law over which the Executive is conferred the power to retain, revoke or amend, within an unreasonable time-frame, thousands of existing laws and principles which govern important areas of public and private life. Furthermore, the procedures for review and repeal or modification of retained EU law threaten to subvert the constitutional balance between Parliament and the UK Government and between the Devolved Administrations and Westminster, placing the B/GFA in increased peril.

The Revocation Bill also breaches the rule of law requirements for law to be accessible, clear and predictable. It creates uncertainty as to which retained EU law will or might be retained, repealed or altered, and it confers over-broad discretionary powers upon UK Government Ministers and devolved authorities in respect of the vital interests of UK citizens. In particular, Clauses 1 to 3 infringe the rule of law because the Revocation Bill does not identify the retained EU laws that will be subject to the “sunset provisions”, nor does it impose an obligation for such laws to be identified. Bizarrely, the-

<sup>33</sup> <https://www.thesun.co.uk/news/21594563/suella-braverman-immigration-bill-deport-channel-migrants/>

<sup>34</sup> <https://www.telegraph.co.uk/news/2023/03/05/migrant-families-deported-enter-britain-illegally/>

<sup>35</sup> <https://www.theguardian.com/uk-news/2023/mar/08/eu-could-terminate-police-and-security-agreement-if-uk-quits-echr?> As the CAJ point out, the other NI issue is that it captures the land border:



re is no authoritative index of retained EU law which civil servants can consult. Nor is the implementation of those sunsets certain. The timing of changes is unknown and unknowable. The Revocation Bill provides no protections against Ministers waiting until the 11th hour to identify whether and, if so, when any change to the default effect of the clause 1 sunset may take place. Likewise, it is silent as to any processes for engagement concerning whether to exempt any measure, or delay its sunset. The state and content of the 'rulebook' on 1 January 2024 is therefore entirely unpredictable. Clauses 1 to 3 of the Revocation Bill also infringe the constitutional principle that the executive is responsible to Parliament. The default time periods for the operation of the sunset clauses create an "artificial emergency" with only months from enactment to the first sunset. This extraordinarily short period gives rise to a 'ticking timebomb' with severe time pressure and no time in which Parliament can effectively scrutinise executive action.

The Delegation Believes that the Bill risks unsettling the devolved settlement in NI further. The powers in clauses 15, 16 and 19 can be exercised by UK Ministers, on a UK-wide basis, without consultation or consent from NI Assembly. It is possible for different substantive positions on retained EU law to be taken, creating unwelcome uncertainties and divergences for businesses having to consider the decisions of both Ministers and the NI Assembly, and ultimately being required to comply with at least two sets of regulations. The power (clause 2) to delay the first sunset is available only to UK Ministers and not the NI Assembly.

Significant for the Delegation, the Revocation Bill also threatens non-compliance with the UK's international obligations, with clauses 1 to 3, 15 and 16 putting those obligations at risk. Various UK Government ministers have purported to commit to ensuring the operation of the Bill does not jeopardise the UK's international commitments. As a matter of law, however, these statements provide no assurances or protections. Of particular concern to the Delegation is the UK's compliance with the Trade and Cooperation Agreement ("TCA") with the EU. Divergence from the level-playing field commitments set out in the TCA risks triggering the dispute resolution mechanisms and, ultimately, leading to the potential suspension of certain obligations within the Agreement and retaliatory (trade) measures against the UK. The TCA also operates on the assumption that human rights are aligned with those of the EU and will not diverge.<sup>36</sup>

## Thematic concerns

There were certain recurring themes which emerged during the interviews with human rights organisations in NI. Issues relating to the general diminution in human rights; women's rights; migrant rights; and the threats to human rights defenders and the peace process predominated alongside the lack of a functioning NI Executive and Assembly. The Delegation reflects upon their concerns below.

<sup>36</sup> <https://www.theguardian.com/uk-news/2023/mar/08/eu-could-terminate-police-and-security-agreement-if-uk-quits-echr>

## General diminution in human rights

The UK Government's proposed HRA 1998 reform, and the ongoing concerns regarding the provisions of the Legacy Bill presently passing through the Westminster Parliament, mean that human rights standards are already under severe threat in NI. The Protocol Bill represented a further threat, which heightened the danger for the people of NI regarding lack of effective human rights protection. Accordingly, the Delegation believes that the Protocol Bill contributed to a worrying legislative agenda by the UK government that will mean a diminution of human rights standards under Article 2 of the Protocol is unfortunately likely.

The Delegation's attendance at the Equality Coalition meetings and the powerful evidence provided by civil society activists over Zoom and in person highlighted that there has already been a diminution in human rights standards in NI. This applies to social, economic, and cultural rights, as well as political and civil rights. The Delegation noted with profound regret how the work of civil society organisations was undermined by political instability at Stormont and the absence of a functioning NI Assembly. This also has an important issue on funding and budgetary planning, which again undermines the practical implementation of their work and the ability for them to fully hold political parties and the UK Government to account.

Evidence from the Children's Law Centre highlighted that there is no overarching recognition in domestic law of what rights children have. There have been a number of challenges to the operation of children's rights, including Brexit, the collapse of the Executive at Stormont, the Covid-19 Pandemic and the subsequent closure of schools/services during this period. The Children's Law Centre is concerned with the UK Government's attempts to rescind the HRA 1998, and is pushing for the UN Conventions on the Rights of the Child to be incorporated into domestic law in order to counteract this. They also highlight that the Bill of Rights for NI (as set out in B/GFA) should be a vehicle in which human rights obligations generally, but also for children, could be achieved.

There is also a particular concern expressed by the Children's Law Centre relating to the policing of children and young people. Between April 2020 and March 2021, there were 2,259 children stopped and searched – of those, only 63 were arrested (2.7% conversion). There is evidence to suggest that the arbitrary stop and search of young males in NI was occurring at a higher rate in more deprived areas. There is also evidence of the strip-searching of children by the PSNI, and the increasing use of spit hoods.<sup>37</sup>

There is still no Bill of Rights for NI. This NI Bill of Rights is separate to the HRA 1998 and the shelved (UK) Bill of Rights Bill (despite its similar name). A Bill of Rights for NI was one of the outstanding issues of the B/GFA. In response to its mandate under the B/GFA, the NI Human Rights Commission (NIHRC) delivered the advice on a Bill of Rights to the British Government in 2008. The following year, in 2009, the NI Office (NIO) responded to this advice by publishing its consultation document. The NIO forwarded the view that further discussion on the NIHRC's advice could take place through

<sup>37</sup> <https://www.gov.uk/government/publications/annual-reports-of-the-independent-reviewer-of-justice-and-security-northern-ireland-act-2007>



a newly established UK Commission on a potential Bill of Rights for the whole of the UK.

That Commission concluded in December 2012 that a Bill of Rights for NI was a separate issue and should proceed accordingly. However, the UK Government has not yet responded to these findings nor has the NIHRC's advice (alongside the NIO's consultation document in 2009) been deliberated on through all-party discussions. Since 2009, there has been little discussion on a NI Bill of Rights between the parties and the Government.<sup>38</sup> The absence of political debate between the parties and the governments has created a vacuum on furthering human rights protection in NI. In NI this failure to fill the vacuum would further breach the B/GFA and diminish the only objective and effective rights-based safeguard in place in NI. A Bill of Rights for NI could also have a focus on economic, social, and cultural rights and be a vehicle whereby many rights within the International Covenant on Economic, Social and Cultural Rights could be incorporated into NI law.<sup>39</sup>

Indeed, various members from Equality Coalition, including the trade union Unison, provided evidence to the Delegation in-person and by Zoom that economic deregulation has had negative implications for workers' rights. NI is considered to be a low wage economy with a comparably smaller private sector compared to parts of the UK, but when the private sector is grown without wages and conditions being improved, this just widens poverty. The Irish Congress of Trade Unions pushes for collective bargaining and, as the NI Executive has devolved power, it is in a unique position, as there is greater control over workers' rights (as opposed to Scotland and Wales who do not have this within the scope of their jurisdiction). The Equality Coalition members underlined that the trade union movement is a forum to bring communities in NI together, operating across sectarian lines in order to build greater cohesion. Accordingly, the Delegation believes that the trade unions in NI can play a very effective role in defusing community (especially sectarian) tensions and promoting human rights.

The Delegation heard from Conradh na Gaeilge that Irish language rights have not been respected as outlined in the B/GFA. The Delegation considers the fact that the Identity and Language (Northern Ireland) Bill was passed in the House of Commons after our visit as very positive. The Delegation noted that it passed in the House of Commons with its third reading on 26 October 2022 and, on 6 December 2022, the Act received royal assent. This provides "official recognition of the status of the Irish language" in NI rather than making it an official language as such.<sup>40</sup> The Delegation recognises that this legislation is good progress and a solid model, but that it still falls short of what the UK committed to in the St Andrews Agreement and in the treaty-based commitments further to the B/

<sup>38</sup> NDNA changed this and set up an Ad Hoc Committee on the Bill of Rights in the NI assembly - <http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/ad-hoc-committee-on-a-bill-of-rights/>

<sup>39</sup> There was also to be an expert panel appointed to advise - this was allegedly blocked by the DUP <https://mobile.twitter.com/cjhumanrights/status/1488618099079319556>. The DUP also stymied the Committee - it eventually reported in February 2022 - the UK Government then decided that DUP consensus required for the Bill of Rights: see No Bill of Rights until Stormont consensus says British government - The Irish News

<sup>40</sup> <https://www.legislation.gov.uk/ukpga/2022/45/section/2/enacted>

GFA (as the relevant CoE treaty-body has already held).<sup>41</sup> In terms of language rights, the Delegation heard that the Irish Language Act and broader NDNA language legislation has faced clear and open opposition from Unionist forces. We consider that the Irish language should be embraced by all NI Assembly parties as a powerful cultural force for good rather than as a site of political battle.

Furthermore, the Delegation heard evidence from various members of the Equality Coalition that LGBTQI+, gender equality, disability, and anti-poverty strategies remain unimplemented. For example, the Delegation heard that the Democratic Unionist Party has continuously used its veto to vote against gay rights, 42% of the LGBTQ+ community have experienced domestic violence, and 35% have experienced hate crimes.

## Women's rights

At the Equality Coalition in-person meeting, there was a powerful presentation by the women's rights group, Womens Resource & Development Agency. The Delegation heard disturbing evidence of violence against women and girls<sup>42</sup> and intimidation of abortion rights activists. Recent research by the Women's Policy Group that NI has a significant problem with men's violence against women and girls. This research showed that 91.2% of women think that NI has a problem with men's violence against women and girls and 97.2% think NI should have a strategy to tackle men's violence against women and girls. They recommended that targeted action must be urgently taken to eradicate men's violence and make NI a safer place for women and girls. Currently, the legal system and justice system are failing women and girls in NI, the vast majority of whom have been impacted by men's violence but never reported this to the police (often through fear of paramilitary groups).

In relation to the women's reproductive rights, the Delegation was told of an example of a woman who was in serious pain in hospital in NI, and when it transpired that the solution to the woman's medical issue was an abortion, the doctor attempted to put her on a plane to England rather than treat her for an abortion. The Women's Policy Group concluded that it is the responsibility of elected officials, legislators, public officials, and those working in the justice system in NI to put legislation, policy and other necessary measures in place to tackle the increasing levels of violence against women and girls and meaningfully engage with the women's sector in doing so.

Changes to the law on abortion in NI were introduced by the UK Government through Section 9 of the Northern Ireland (Executive Formation etc) Act 2019. The Act set out that Section 9 would come into force on 22 October 2019 if an Executive was not established by 21 October 2019. Since the NI Executive was not in place by that date, the following changes to abortion law in NI were made on 22 October 2019:

<sup>41</sup> MIN-LANG (2021) 3 COMEX evaluation of the UK, Paragraph 26, recommendation 2a. Cited in <https://caj.org.uk/publications/submissions-and-briefings/briefing-note-on-identity-and-language-northern-ireland-bill/>

<sup>42</sup> <https://wrda.net/wp-content/uploads/2022/04/WPG-VAWG-Research-Report.pdf>



- sections 58 and 59 of the Offences Against the Person Act 1861 in NI (attempts to procure abortion) were immediately repealed;
- a moratorium on abortion-related criminal prosecutions came into effect;
- a duty was placed on the UK Government to introduce, by regulations, a new legal framework for abortion in NI which ensured that the “recommendations in paragraphs 85 and 86 of the CEDAW report are implemented in respect of Northern Ireland” by 31 March 2020. The CEDAW report is the “Report of the Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women”.

A new legal framework for abortion services in NI was introduced, by regulation, by the UK Government on 25 March 2020 following a 6-week consultation. The Abortion (Northern Ireland) Regulations 2020 allow access to abortions up to 12 weeks gestation (11 weeks + 6 days), without conditionality, to be certified by one medical professional that the pregnancy has not exceeded its twelfth week. Abortions beyond 12 weeks gestation are lawful in specified instances, including when severe foetal impairment and fatal foetal abnormalities are detected.

The Regulations were subsequently re-made as the Abortion (Northern Ireland) (No. 2) Regulations 2020 on 12 May 2020, correcting drafting errors identified by the Joint Committee on Statutory Instruments. The Regulations were approved by both Houses of Parliament in June 2020. Concerns were repeatedly raised that full commissioning of abortion services in NI did not take place. The Westminster Government responded that responsibility for commissioning services rested with the



NI Health Minister and associated NI Departments. The NI Health Minister stated, however, that the 2020 regulations did not compel the NI Executive / Health and Social Care Board to provide abortion services.

Early in 2021, the NIHRC announced that it was taking legal action against the Secretary of State for NI, on the grounds that he had failed to ensure that women are provided with abortion and post abortion care in public health facilities in NI. In the same claim, the NIHRC also challenged that the NI Executive Committee and NI Minister of Health had failed to agree to commission and fund abortion and post abortion care in NI. A judicial review, brought by the NIHRC, was heard at Belfast High Court in May 2021. Handing down the court’s decision in October 2021, Mr Justice Colton said that the NI Secretary had failed to comply with his duties, under section 9 of the Northern Ireland (Executive Formation etc) Act 2019, to “expeditiously” provide women with access to high quality abortion and post abortion care in all public health facilities in NI. The NIHRC’s claim for judicial review against the Minister of Health and the NI Executive Committee was dismissed by Mr Justice Colton.

In March 2021, the UK Government laid the Abortion (Northern Ireland) Regulations 2021 to address the gaps in commissioning abortion services in NI. The new regulations give the Secretary of State a power to “direct Northern Ireland Ministers and, departments or relevant agencies to implement all of the recommendations in paragraphs 85 and 86 of the CEDAW report, consistent with the conditions set out in the Abortion (Northern Ireland) (No.2) Regulations 2020”. The 2021 Regulations were approved by both Houses of Parliament at the end of April 2021.

In July 2021, the Secretary of State for NI issued a direction to the Department of Health, the Minister for Health, the Health and Social Care Board, and to the First and Deputy First Minister, to “commission and make abortion services available in NI as soon as possible, and no later than 31 March 2022”. A week before the deadline, the NI Secretary stated that it was “increasingly clear” that the NI Department of Health was not going to ensure abortion and post abortion care was available in NI by the end of March. He added that he was left with “no choice but to prepare work on further Regulations to ensure services are commissioned [...] as soon as is reasonably practicable” following the NI Assembly election in May 2022.

The Abortion (Northern Ireland) Regulations 2022 were subsequently laid on 19 May 2022. They place an obligation on the NI Department of Health to commission and fund abortion services, irrespective of whether the service provision has been discussed, or approved, by the NI Executive Committee. The regulations also give the NI Secretary the power to intervene directly in the matter to ensure that services are implemented. Five months later, in October 2022, the NI Secretary announced that the UK Government would intervene and commission abortion services in NI on the grounds that the NI Department of Health had not acted. A formal instruction from the Secretary of State to the Department of Health to commission abortion services followed in December 2022.

The 2021 Regulations and Directions were subject to a judicial review, brought by the Society for the Protection of Unborn Children (SPUC). The case was heard at Belfast High Court in early October 2021. On 8 February 2022, Mr Justice Colton found both the 2021 Regulations and the 2021 Direc-



tions to be lawful and dismissed the challenge brought by the SPUC. The SPUC has since taken the case to the Court of Appeal, with hearings in November 2022 and January 2023.

Following the fact-finding mission by the Delegation, on 7 December 2022, the judgment of the UK Supreme Court in the Reference by the Attorney General for Northern Ireland – Abortion Services (Safe Access Zones) (Northern Ireland) Bill [2022] UKSC 32 affirmed the legality of a measure aimed at strengthening the exercise of the right to abortion in NI. The case concerned a challenge to the legislative competency of the NI Assembly to introduce a Bill curbing the right to protest outside of abortion clinics, which the Attorney General for NI ('AG') contended to be incompatible with guarantees under the ECHR. The Bill intended to protect those accessing abortion clinics from harassment by creating "safe access zones" around the clinics, within which it would be an offence to influence a protected person, whether directly or indirectly [Clause 5(2)(a)].

This measure was considered necessary to fulfil positive obligations under the ECHR to provide an effective procedural framework to enable pregnant people to access lawful abortion (Articles 8 and 3 of the ECHR). At the same time, curbing anti-abortion demonstrations within the clinic's vicinity undoubtedly interfered with another protected right, the right to protest (Articles 9, 10, and 11 of the ECHR). The AG contended that the unqualified criminal offence, offering no scope for any defence of lawful or reasonable excuse, did not satisfy a proportionality requirement. The Supreme Court disagreed. It concluded that the satisfaction of the elements of the general legal prohibition could achieve the appropriate balance and be compatible with the Convention without the need for a defence or a separate proportionality assessment. The Delegation believes that there remains much work to do to secure women's rights in NI, including the urgent need for proper commissioning of abortion services.

## Migrant rights

The Delegation met with the Migrant Centre NI (MCNI) where some of the difficulties that migrants face in NI were outlined in considerable detail. The MCNI explained that most issues in NI are viewed through a nationalist/loyalist lens, into which migrants (old and new) do not fit into. This has two effects – it codifies sectarianism as the status quo, whilst also providing no natural support network for migrants to access if required.

The issue of data sharing between the PSNI and the Home Office was highlighted by the MCNI as an obstacle to survivors reporting domestic violence (DV) to the police. The MCNI have been told by the PSNI that they do not practise or engage in data sharing with the Home Office relating to undocumented people reporting instances of DV. However, the PSNI claim that they are unable to put this commitment 'on paper' as that is in contravention of their own legal obligations. The Delegation was alarmed to note that an investigative journalist has now found out the PSNI assurance is in fact not true.<sup>43</sup>

<sup>43</sup> See <https://www.thedetail.tv/articles/migrants-risk-deportation-after-reporting-crimes-to-psni>

This puts the MCNI in a difficult position as they are unable to confidently tell service users that it's safe to report DV to the police without fear of potential detention or deportation as a result of their immigration status. This is a live issue and the MCNI are involved in a joint complaint at the Equality Commission for NI about the failure of the PSNI to do adequate equality screening on their data sharing policies. There continues to be women survivors without settled status too afraid to report domestic violence to the PSNI, and the MCNI have also seen cases of perpetrators of DV reporting (or threatening to report) women's lack of status to the police.

Regarding the role of migrants in transitional justice, the MCNI underlined how hate crime and other racially motivated crime cannot be analysed through the same lens of xenophobia and systemic racism as seen in the UK, but instead it must be looked at through the specific local context in NI. They stated that the areas with the most amount of hate crimes are often those with the highest levels of violence and social deprivation, where paramilitaries continue to have a significant presence. We heard that hate crimes, and in particular racist hate crimes, are largely at the hands of loyalist paramilitary groups, albeit the highest areas of social deprivation remain in nationalist areas. To paramilitary groups, newly migrated communities appear as an existential threat to their power base, as these groups live outside of the nationalist/loyalist framework. These communities often have a 'social contract' with paramilitaries. This social contract means that people experience violence, intimidation, and threats if they are to openly challenge paramilitary activity.

According to the MCNI and recent Census results, the Protestant population in NI has declined in the last 30 years, which has coincided with rises in immigration to the area from all over the world. Derry/Londonderry is a city divided on sectarian lines and which has seen a significant increase in Polish migration since the 2010s. We heard concerning evidence that the Polish community have encountered racial violence from some loyalist paramilitaries, as they were perceived as a 'double threat' – migrants, and Catholics.

According to the MCNI, it is very difficult for migrants to apply for welfare benefits, like Universal Credit. Interpreters are often not available and the fact that most benefits need to be applied for online creates a barrier for many new migrants who have no access to the internet. There is no specific funding available for advice services for migrants. Moreover, migrants need some kind of proof of their status to access welfare benefits which is not always readily available. New migrants, from EU and non-EU countries, have continuously been denied access to healthcare. Hospital staff are under obligations under the 'Hostile Environment' to check specific documentation when giving medical care. However, they often do not properly understand the relevant documentation and even in instances where patients have EU settled status, they have been sent significant bills following their care.<sup>44</sup> The MCNI sees this as a particularly gendered issue, as often the care that is chargeable if you are ineligible for NHS care is usually either maternity or gynaecology services. The MCNI works closely with Maternity Action on this issue and takes referrals from them.

<sup>44</sup> As the CAJ explain, the NI system is different to England - see the health care section in: <https://caj.org.uk/publications/reports/can-stormont-rollback-the-home-office-hostile-environment-legal-research-report/>

The MCNI highlighted many difficulties experienced as a result of NI often being without an Executive, meaning they fall under the wayside and cannot fulfil what they see as their purpose as acting as a 'conduit' between service users and the Government. The lack of an Executive has also meant that the Istanbul Convention (on domestic violence) has been unable to be ratified in NI (like it has been in Britain), as well as the fact that it has been impossible to pass other progressive legislation and policy.

## Human rights defenders

The Delegation heard evidence from Professor Harvey of Queens University Belfast School of Law, and a former Commissioner of the NIHR, as to his being targeted on social media. This was recently confirmed by the Police Service of Northern Ireland. According to a statement in March 2022 by UN human rights experts (Ms. Irene Khan, Special Rapporteur on the right to freedom of opinion and expression, Ms. Mary Lawlor, Special Rapporteur on the situation of human rights defenders, Ms Koumba Boly Barry, Special Rapporteur on the right to education, Mr. Diego García-Sayán, Special Rapporteur on the independence of judges and lawyers) the ongoing smear campaign against Professor Harvey threatens academic freedom in NI and has the potential to spark physical violence.<sup>45</sup>

Since 2019, Professor Harvey has been the subject of a vicious online campaign, in connection with his work as Professor of Human Rights Law at Queens University Belfast. His academic credibility has come under attack, and he received hundreds of smears and threats from politicians, journalists and other social media users. His personal security has also been threatened. Much of Professor Harvey's recent work focuses on the constitutional future of Northern Ireland, following the UK's withdrawal from the European Union. "The threats seek to discredit his academic standing by making baseless claims he is connected with paramilitary groups or equating his ideas with Nazism," the experts said.

The UN experts are particularly concerned that the threats are taking place in an increasingly polarised political landscape in Northern Ireland. Previous physical attacks on leading human rights figures were preceded by campaigns of vilification. "We believe the campaign against Colin Harvey may constitute incitement of national hatred, putting him at risk of physical harm," the experts said. The experts expressed concern that some influential figures in NI were fuelling conspiracy theories about Professor Harvey. "When those in authority take part in smear campaigns, they legitimize attacks from other members of society," they said.

The most recent attacks on the Professor Harvey came in November 2022 after he posted details of the Queen's University Belfast report on Irish unity, which is entitled, 'Making the Case for Irish Unity in the EU.'<sup>46</sup> Professor Harvey of QUB School of Law and barrister Mark Bassett BL were

<sup>45</sup> <https://www.ohchr.org/en/press-releases/2022/03/attacks-against-human-rights-advocate-threaten-academic-freedom-northern>

<sup>46</sup> <https://pure.qub.ac.uk/en/publications/making-the-case-for-irish-unity-in-the-eu>

commissioned to write the report for The Left in the European Parliament (GUE/NGL), the EU parliamentary grouping which includes Sinn Féin and other left-wing Irish MEPs. The Delegation also noted with concern the abuse that the Irish barrister, Caoilfhionn Gallagher KC of Doughty Street Chambers in London, has received online for her work on human rights issues, including those that pertain to NI. The attacks on human rights defenders in NI are particularly concerning following the murders of human rights lawyers, Pat Finucane and Rosemary Nelson, during the Troubles, which were highlighted by various organisations which were interviewed.

## Threats to the Peace Process

The Delegation was concerned to hear about Loyalist paramilitaries withdrawing support for B/GFA and the NI Protocol demonstrations. They believe that there is a latent risk to the peace process which the UK is failing to manage considering its unilateral actions on the NI Protocol Bill and its policy to undermine human rights protections in NI (and in Britain). In March 2022 there was an attempted attack on the Irish foreign minister, Simon Coveney, in Belfast. It was a hoax, possibly carried out by the loyalist paramilitary group, the UVF, the police have said. It halted a peace and reconciliation event in north Belfast, forcing Coveney to leave the stage and interrupting a funeral in a church in the same grounds as the venue.

Furthermore, in October 2022, in a letter which was shared via the Loyalist Communities Council (LCC), the terrorist groups carried a clear warning that Irish Government ministers should not visit NI. The LCC is an umbrella group which represents the views of paramilitary gangs including the UVF, UDA and RHC. They also warned of "dire consequences" if there was no movement on the NI Protocol in a letter that indicated support for the paramilitary ceasefires may be waning. The Delegation has serious concerns about the security of the peace process in NI if the UK Government proceeds with its legislative agenda and gives further scope to loyalist paramilitaries to use the NI Protocol as a reason to prevent human rights being secured and implemented under the terms of the B/GFA and the Withdrawal Agreement, including Article 2 of the Protocol.

Furthermore, the Delegation noted with concern the attempted murder of the senior PSNI detective John Caldwell in February 2023 and the claim of responsibility by the New IRA for the shooting. The Delegation condemns this attack and believes that this incident highlights the need for an increased focus on human rights within NI (rather than human rights being diminished). We believe that community policing (rather than a policy of increased securitisation) is a powerful means to offset the suspicion of the PSNI from those who may be under the sway of dissident republican factions.



## Ireland's Future

The Delegation attended the major Ireland's Future conference at the 3 Arena in Dublin on 1 October 2022. The conference provided important context to their report, and they noted in particular that:

- Ireland's Future was established to advocate for, and promote, debate and discussion about Ireland's future, including the possibility and viability of new constitutional arrangements on the Island. It is guided by the values of the B/GFA and dedicated to the promotion and protection of human rights, equality and fostering mutual respect between all views and traditions that share this island. Ireland's Future believes that Brexit has dramatically changed the social and political dynamic on this island. It believes that the prospect of a new constitutional arrangement on the island of Ireland is growing closer.
- Ireland's Future asserts that new constitutional arrangements have the potential to mitigate the most negative impacts of Brexit and address the aforementioned promotion and protection of human rights, equality and the fostering of mutual respect. It is not a political party and is not affiliated to any political party. It welcomes participation from people from all political persuasions interested in furthering the goals of Ireland's Future.
- Ireland's Future considers that any move to new constitutional arrangements requires serious thought, consideration and planning. It believes that the requisite planning for these potential changes must be broad, inclusive, detailed and comprehensive. It has argued that constitutional change must be on the basis of the consent of citizens of the island of Ireland, as informed by the B/GFA.

Attendance at this conference helped to provide context to legacy and human rights issues upon which the Delegation took evidence. There was a sense of continuity between the past, present and future of human rights discourse, implementation and culture within NI and the island of Ireland. The conference has accordingly informed the Delegation's conclusions and recommendations.

## Conclusion and Recommendations

The UK Government will violate international law if it passes the Legacy Bill, legislation which is emblematic of the diminution of human rights standards in NI. This is not just the opinion of the Delegation and a wide cross section of civil society organisations in Britain and NI, but it is the definitive position of the NIHRC, who advise the UK Government on human rights issues. They state that "the Bill is incompatible with Articles 2 (right to life) and 3 (freedom from torture) of the ECHR. This Bill is fatally flawed, it is not possible to make it compatible with the ECHR."<sup>47</sup>

This stark statement by the NIHRC is remarkable and the Delegation agrees that under the ECHR and the HRA 1998, the UK must ensure that the Government investigates potentially unlawful ki-

<sup>47</sup> <https://committees.parliament.uk/writtenevidence/109473/html/>

llings and other serious human rights violations. The UK Government's proposal as planned in its 'Command Paper' resulted in the NI Assembly passing a motion to reject the Command Paper without dissension.<sup>48</sup> There were only cosmetic changes made by the UK Government in an attempt to address the UK's obligations under the ECHR. These changes were an admission by the UK Government of some of the previous failings, and they have subsequently been criticised by the Council of Europe's Human Rights Commissioner in August 2022.<sup>49</sup>

The Delegation is seriously alarmed that the provisions of the Legacy Bill (together with the related legislative agenda attacking human rights) seem to be a concerted attempt by the UK Government to unilaterally dismantle a key plank of the B/GFA, which is the painfully negotiated human rights infrastructure. The Delegation believes that the principles that guided the 2014 Stormont House Agreement – truth, justice, rule of law, and human rights compliance – must be central to any process to deal with the legacy of conflict in NI, and that the UK government should adopt a victim-centred approach.<sup>50</sup> The Delegation's view is that any 'Legacy' mechanism must:

- Be independent of UK Government manipulation in its formation and operation.
- Create legal accountability for human rights violations – and not conditional immunity.
- Reflect the views and interests of victims and their families.
- Be appropriately funded.
- Involve sufficient engagement by the UK Government and other public bodies, especially including the NI Human Rights Commission.
- Receive cross-departmental support for its functioning.
- Have the power to order the full disclosure of facts and evidence, without being limited by overly broad national security exceptions.
- Receive the endorsement of the Irish government.

In a damning indictment, the internationally respected Bingham Centre for the Rule of Law states that the proposals in the Legacy Bill "are not supported by: nationalists, republicans, unionists, loyalists and the ever-increasing non-aligned section of the community in NI. This Bill does not take into account the wishes of the people of NI. The process of making this Bill undermines the Rule of Law by being neither accountable nor democratic."<sup>51</sup>

In similar terms, the Council of Europe Commissioner for Human Rights in her submission addressed to the Committee of Ministers of the Council of Europe, in accordance with Rule 9.4 of the Rules of the Committee of Ministers, in the context of the supervision of the execution of the judgment of the European Court of Human Rights, considered that,

<sup>48</sup> <http://www.niassembly.gov.uk/assembly-business/order-papers/session-2020-2021/20-july-2021/>

<sup>49</sup> <https://rm.coe.int/submission-by-the-council-of-europe-commissioner-for-human-rights-undede/1680a7b336>

<sup>50</sup> <https://www.gov.uk/government/publications/the-stormont-house-agreement>

<sup>51</sup> <https://binghamcentre.biicl.org/index>

“by introducing the Bill, the UK government has embarked on a course of action that runs a very significant risk of eventually being found by domestic courts and/or the European Court of Human Rights not to be compliant with the Convention” and stated, “on the basis of her visit and further monitoring, the Commissioner concludes that there is minimal support for, and public confidence in, the Bill and in its mechanisms in Northern Ireland.”<sup>52</sup>

Furthermore, it is significant that in its 1459th meeting on 7-9 March 2023, the Committee of Ministers stated that it,

“... strongly reiterated their calls upon the authorities to reconsider the conditional immunity scheme in light of concerns expressed around its compatibility with the European Convention; reiterated their serious concern about the proposal to terminate pending inquests that have not reached substantive hearings, and their call on the authorities to reconsider this proposal and allow the limited number of pending legacy inquests to conclude, to avoid further delay for families; underlined again the importance for the success of any new investigative body, particularly if aimed at achieving truth and reconciliation, of gaining the confidence of victims, families of victims and potential witnesses; decided to resume examination of the group of cases at their 1468th meeting (June 2023) (DH) to closely follow all developments and, in the absence of tangible progress in the legislative process to sufficiently allay the concerns about the Bill’s compatibility with the Convention by 3 May 2023, to instruct the Secretariat to prepare a draft interim resolution for consideration at that meeting.”<sup>53</sup>

Accordingly, the Delegation does not suggest amendments to the Legacy Bill because, together with other prominent human rights organisations, we are calling for it to be withdrawn in its entirety to maintain the integrity of the B/GFA, the peace process, and the rule of law in NI and, indeed, in the UK as a whole.

The Delegation believes that the perilous and contingent status of the HRA 1998 in the UK’s ‘unwritten’ constitution is inherently problematic for human rights in NI. The present Conservative Party administration has stated that it is willing to continue to push the boundaries of domestic and international law. When the Delegation compares the HRA 1998 to its constitutionally aligned and entrenched equivalent in Ireland, the European Convention on Human Rights Act 2003, this suggests that ultimately human rights in NI would be better protected in a reunified Ireland, albeit this is a matter for the people of Ireland under the B/GFA.

Finally, the Delegation would like to sincerely thank the individuals and organisations it met on its fact-finding mission for their time in meeting with it, and for their ongoing commitment to human rights in NI. It was a privilege for the Delegation to spend time in their company. We hope that the NI Assembly is restored without delay and civil society has the opportunity to help secure human rights for all of the increasingly diverse communities in NI.

<sup>52</sup> <https://rm.coe.int/submission-by-the-council-of-europe-commissioner-for-human-rights-un-de/1680a7b336>

<sup>53</sup> [https://search.coe.int/cm/pages/result\\_details.aspx?objectid=0900001680aa78e5](https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680aa78e5)

## Recommendations:

1. The UK Government should cease its legal and political attacks on the B/GFA. It is clear to the Delegation that the UK Government is not acting in good faith or fulfilling its role as an honest broker in maintaining the terms of the B/GFA.
2. The Legacy Bill should be withdrawn from the Westminster legislative process.
3. There should be a legacy process that respects and implements the Stormont House Agreement in a human-rights compliant manner.
4. The HRA 1998 should not be weakened and, indeed, should be strengthened with the UK Government committing to legislate upon a finding of a Declaration of Incompatibility with the ECHR or upon the case law of the European Court of Human Rights finding a violation by the UK of a particular human right.
5. The UK Government should legislate for the long-awaited NI Bill of Rights without further delay.
6. The dynamic alignment of human rights within NI under Article 2 of the Ireland/Northern Ireland Protocol should be reaffirmed by the UK Government.
7. The UK Government should condemn the attacks on human rights defenders in Parliament, such as Professor Colin Harvey in NI and Caoilfhionn Gallagher KC in London, and it should cease its damaging and dangerous rhetoric against human rights lawyers.
8. The Irish Government should commit to making an inter-state case in the European Court of Human Rights against the UK Government’s Legacy Bill if it becomes law.
9. There remains much work to do to secure women’s rights in NI, including the urgent need for proper commissioning of abortion services and a strategy to combat violence against women and girls. The Delegation recommends a comprehensive strategy across all departments in the NI Executive to ensure practical implementation of abortion services and enhanced security for women and girls on the streets and within the homes of NI.
10. There remains much work to do to secure migrant rights in NI and the Delegation recommends a comprehensive strategy across all departments in the NI Executive to ensure practical implementation. The PSNI should cease data sharing with the Home Office immediately.
11. There remains much work to do to secure language rights in NI and the Delegation recommends a comprehensive strategy across all departments in the NI Executive to ensure practical implementation.



- 12. There remains much work to do to secure LGBTQI+ rights in NI and the Delegation recommends a comprehensive strategy across all departments in the NI Executive to ensure practical implementation.
- 13. The UK Government should withdraw the non-human rights-compliant Illegal [sic] Migration Bill, which further risks the human rights protections for people contained within the HRA 1998.
- 14. The UK Government should withdraw the Revocation Bill, which risks breaching international law and the devolved settlement contained within the NI Act 1998.
- 15. A citizens' assembly should be implemented without delay by the Irish Government to prepare for a reunification referendum in line with the B/GFA.

Appendix 1

Migrant Centre NI - Friday 29 July 2022 by Zoom; Thursday 29 September 2022 in-person

Interviewee: Kendall Bousquet, Advocacy Officer

Summary about the organisation/its work

Migrant Centre NI is a registered charity based in the Ballynafeigh Community Development Association in Belfast. The organisation was initially established as The Belfast Migrant Centre, and in 2014, to reflect the work of the organisation the name was changed to the Migrant Centre NI. It was established to protect the rights of migrant workers in NI, tackle racism, eliminate barriers against migrant workers, advance education and raise public awareness about their rights. It has 3 offices across NI: in Belfast, Lurgan and Derry/Londonderry.

Appendix 2

Human Rights Consortium - Thursday, 4 August 2022 by Zoom

Interviewee: Alexa Moore, Research Officer

Summary about the organisation/its work

The Consortium is a broad alliance of 160 civil society organisations from across all communities, sectors and areas of NI who work together to help develop a human rights based society.

The Consortium provides a coherent, unified, non-party political coalition for civic society groups to

develop the recognition, respect, protection and implementation of human rights standards in NI. They provide a platform for civil society groups to work together to achieve this aim through collaboration across different sectors and issues. They also work to advance awareness, understanding and support for human rights generally in NI. A core element of this work to date has been their ongoing campaign for a strong Bill of Rights for NI. They focus on human rights frameworks, positively influencing perspectives on human rights and supporting civil society to become engaged in human rights advocacy.

Appendix 3

Relatives for Justice - 30 August 2022 by Zoom and Friday 30 September 2022 in-person

Interviewees: Mike Ritchie and Paul Butler

Summary about the organisation/its work

Relatives for Justice help families who are coping with bereavement and injury through conflict related violence and trauma. The help they provide includes assistance via therapeutic programmes including counselling and complementary therapies, classes, casework support, family support programmes and drop-in services. They also do advocacy including interfacing with investigations and mechanisms established to investigate conflict related harms. RFJ also provide support to individuals accessing reparatory schemes such as those provided by the Victims and Survivors Service.

RFJ provide:

- Welfare and benefits advice
- Victims and survivors service
- The Remembering Quilt Project
- Counselling and Therapeutic Service

Appendix 4

Pat Finucane Centre – Tuesday, 9 August 2022 by Zoom and Friday 30 September 2022 in-person

Interviewees: Alan Brecknell and Paul O'Connor

Summary about the organisation/its work

The Pat Finacune Centre (PFC) is a non-party political, anti-sectarian human rights group advocating non-violent resolution of the conflict on the island of Ireland. PFC believe that all participants to the Troubles have violated human rights. The PFC asserts the failure by the UK State to uphold

Article 7 of the Universal Declaration of Human Rights, “all are equal before the law and are entitled without any discrimination to equal protection of the law”.

Some of the work PFC undertakes includes:

- Justice for the Forgotten — JFF, a project of the PFC, provides support and advocacy to victims and survivors in the Republic including those bereaved and injured in the Dublin and Monaghan bombings.
- Networking with human rights NGOs and parliamentarians in Ireland and abroad.
- Long-term involvement on a wide range of issues surrounding policing and the criminal justice system.
- Facilitating dialogue between the two communities in the North through private contacts, workshops and public meetings on potential truth processes etc.
- Individual casework with families who have lost loved ones and creating support structures for families.
- Recovery of Living Memory Archive.



Appendix 5

Human Rights and Equality Working Group, Law Society of Northern Ireland - Thursday, 25 August 2022 by Zoom

Interviewees: Maria McCloskey (Chair of Human Rights Equality Working Group of Law Society); Dr Conor McCormick (Senior Lecturer in Law at Queens University Belfast); Gemma McKeown (CAJ); Jude Copeland KC (Barrister); Les Allamby (Member of Human Rights Equality Working Group of Law Society and former Chief Commissioner of NI Human Rights Commission); and Orla Drummond (Member of the Law Society Policy and Engagement Team).

Appendix 6

WAVE - Thursday, 25 August 2022 by Zoom and Friday 30 September 2022 in-person

Interviewee: Sandra Peake

Summary about the organisation/its work

WAVE was formed in 1991 from a small nucleus of eight women, all of whom had lost their partner in the Troubles/Conflict in NI. WAVE is the largest cross community victims' group in NI, with five centres and 15 satellite projects, spread across the country. Initially the acronym 'WAVE' stood for Widows Against Violence Empower, as the objective of the organisation was to empower women whose husbands or partners were murdered.

The organisation was formed relatively late in the Troubles in response to specific need. Whilst initially concerned with the bereaved, in 1995 the remit was expanded to include those who were injured and/or traumatised in the Troubles/Conflict in NI. It provides:

- Practical and emotional support to families who wish to pursue outstanding legacy issues
- Complimentary therapy, delivered at all WAVE Centres and satellite clinics.
- Counselling and psychotherapy
- Welfare advice

Current campaigns include WAVE Injured Group, formed in the mid-2000s, a group where those who were injured by the Troubles to have a forum where they could meet to discuss the issues they have faced. WAVE also campaign for the Families of the Disappeared, victims who were abducted, murdered and secretly buried.



Appendix 7

Committee on the Administration of Justice (CAJ) - Tuesday, 30 August 2022 by Zoom

Interviewee: Daniel Holder

Summary about the organisation/its work

The Committee on the Administration of Justice (CAJ) is an independent, non-governmental human rights organisation that works to ensure that the administration of justice in NI is compatible with the highest international human rights standards. They aim to be a ‘thinktank with teeth’ – they monitor rights and equality in NI and develop and advocate for tangible, rights-based solutions to ongoing and emerging problems.

CAJ takes no position on the constitutional status of NI and is firmly opposed to the use of violence for political ends. Their membership is drawn from across the community, and they receive no government funding. CAJ’s work is based on international human rights laws and standards. They work in solidarity with other human rights NGOs, both locally and internationally, and are affiliated to the International Federation of Human Rights (FIDH).

Appendix 8

Equality Coalition, c/o CAJ and Transitional Justice Institute - Tuesday, 13 September by Zoom and Thursday 29 September 2022 in-person

Interviewees by Zoom: Anne Smith, Professor O’Connell and Professor Harvey. The Delegation heard presentations from 14 member NGOs at the in-person meeting.

Summary about the organisation/its work

The Equality Coalition is jointly convened by UNISON and the Committee on the Administration of Justice (CAJ). Cumulatively, the member organisations in the Equality Coalition work across all nine equality categories covered by Section 75 of the NI Act 1998, as well as on other recognised protected equality grounds, including (but not limited to) socio-economic status, language, citizenship, irrelevant criminal record, and immigration status. The Equality Coalition was founded in 1996 by community and voluntary sector organisations and trade unions. It was instrumental in putting equality at the forefront of the agenda at that time, specifically in relation to Policy Appraisal and Fair Treatment (PAFT), the Good Friday/Belfast Agreement, and the NI Act 1998.

The Equality Coalition now has over 100 members, many of which are umbrella organisations. It provides a forum for unity between multiple sectors when campaigning for equality, while still

allowing for the diversity of its members’ work and views. By facilitating a strong message from diverse equality groups, the Equality Coalition helps to ensure maximum impact in a resource efficient manner. This approach is particularly important in the current environment, where organisations’ resources are challenged. In addition, the Equality Coalition compiles and circulates information on matters related to equality in NI. It also facilitates high level meetings with the Equality Commission for Northern Ireland (ECNI), government departments and political representatives. The Equality Coalition consists of over 100 NGOs and trade unions and was set up to monitor and implement the Good Friday Agreement.

