

## **The unimplemented rights commitments of the peace settlement 23 years on from the Belfast/Good Friday Agreement: A mapping exercise March 2021**

This paper aims to ‘map’ the status of the principal commitments relating to human rights (including equality) made as part of the 1998 Agreement and the subsequent implementation and broader agreements of the peace process.

These are, namely, the following:

<b>Agreement</b>	<b>Year and Parties</b>
<b>Belfast or Good Friday Agreement (hereafter ‘GFA’)</b>	1998 – UK-Ireland (Multi-Party Agreement and British-Irish Agreement treaty)
<b>Weston Park Agreement</b>	2001 UK-Ireland
<b>Joint Declaration</b>	2003 UK-Ireland
<b>St Andrews Agreement</b>	2006 UK-Ireland
<b>Hillsborough Castle Agreement</b>	2010 DUP & Sinn Féin
<b>Stormont House Agreement</b>	2014 UK-Ireland, NI Executive parties
<b>Fresh Start Agreement</b>	2015 UK-Ireland & NI Executive parties
<b>New Decade New Approach</b>	2020 UK-Ireland & NI Executive parties

This paper ‘updates’ the mapping found within *‘Mapping the Rollback: Human Rights Provisions of the Belfast/Good Friday Agreement 15 years on’*, a [report](#) produced in 2013 further to a conference organised by CAJ in collaboration with the Transitional Justice Institute of Ulster University and the Human Rights Centre at Queen’s University Belfast.

Additionally, this paper is intended to build upon the Equality Coalition’s 2019 *‘Manifesto for a Rights Based Return to Power Sharing’*, which was produced in the context of the January 2017 collapse of the Stormont institutions. The Equality Coalition, co-convened by CAJ and UNISON, is a network of over 100 equality NGOs and trade unions based within NI. In the preamble to the Manifesto, the Coalition argues that many of the rights-based commitments in the agreements remain unimplemented. This is despite many constituting legal obligations and despite these commitments being intended as “safeguards on the NI Executive to counter and prevent abuses of power, discriminatory decision making and rights deficits”, such as those which ultimately led to the collapse of the institutions.

One year on from the [New Decade New Approach](#) (NDNA) deal - notwithstanding the context of the pandemic - many of the same issues remain. No Programme for Government has been adopted, nor has the Irish language act and broader NDNA language legislation been introduced, despite drafts of both being already included in the NDNA agreement. There has been some limited progress, such as the recent publication by the Department for Communities (DfC) of expert advisory panel reports to help inform the pending LGBTQI+, gender equality, disability, and anti-poverty strategies. There has also been the establishment of the Ad Hoc Assembly Committee on the Bill of Rights, and some positive changes to Executive procedures. Whilst the ‘Petition of Concern’ has not been used since NDNA, there has been an understandable focus on the use other vetoes, including to block measures to advance rights and equality. This document therefore refreshes our previous mapping exercise with the aim of assisting the current debate.

**This document represents an updated mapping exercise, charting the status of a range of rights-based commitments found within the Agreements, including NDNA.**

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## 1. Rights-based Executive and Legislative safeguards

Commitment	Status
<p><b>1.1 European Convention on Human Rights (ECHR)</b></p> <p>The GFA contains the following commitment: <i>“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.”</i></p> <p>The GFA also commits to safeguards to ensure the NI Assembly nor public bodies can infringe the ECHR, and arrangements to ensure that ‘key decisions and legislation’ are proofed to ensure they do not infringe the ECHR. It also links the ECHR (and Bill of Rights) to the <b>Petition of Concern</b> mechanism.</p>	<p>There are provisions in the Human Rights Act (HRA) 1998 and Northern Ireland 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 GFA.</p> <p>Compliance with this core GFA commitment has been repeatedly under threat from the Conservative party who have previously sought the repeal of the HRA. The present UK Government have now established a further review of the HRA and have already introduced and plan legislation that diminishes the incorporation of the ECHR in UK (and hence NI) law.<sup>1</sup></p> <p>Under Article 2 of the 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 GFA rights (including the duties to incorporate the ECHR) as a result of Brexit.<sup>2</sup> Whilst this is a welcome safeguard, it will have limited value if Government continues to legislate to diminish incorporation of the ECHR for other reasons.</p> <p>As further detailed below 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.</p>
Commitment	Status
<p><b>1.2 International obligations: (a) Human rights treaties</b></p> <p>The GFA provided for the UK to ‘actively consider’ ratifying the <i>European Charter for Regional and Minority Languages (ECRML)</i> and for Ireland to ratify the <i>Framework Convention for National Minorities (FCNM)</i>, Ireland also committed to equivalence to human rights protections “as will pertain in Northern Ireland” including specific reference to incorporation of the ECHR.</p>	<p>Ireland ratified the FCNM in 1999 and the UK ratified the ECRML in 2001 (and had already ratified the FCNM). <i>(see discussion on compliance with language rights provisions in the section below).</i></p> <p>The European Convention on Human Rights Act 2003 gave the ECHR a level of domestic effect in Irish law.</p> <p>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>3</sup> This concept may gain further significance in the context of current conversations about preparing for possible constitutional change.</p>

## **(b) International Obligations and NI**

The GFA provided that Westminster (“whose power to make legislation for Northern Ireland would remain unaffected”) “**will... legislate as necessary to ensure the United Kingdom’s international obligations are met in respect of Northern Ireland**”

This is notably the only area specified in the GFA whereby **Westminster is to legislate on devolved matters**. (However, this ‘constitutional convention’ of not normally legislating on devolved matters has been found by the courts not to be legally binding and Westminster has legislated on devolved matters that were not ‘international obligations’ most notably in relation to Brexit).

The GFA itself, as a treaty constitutes binding obligations. This includes the GFA references to consent and the “**right to self determination**” that both refer to whether NI remains part of the UK or becomes part of a united Ireland. The provisions for a ‘border poll’ to this end are set out in this section of the GFA.

s26-27 of NI Act 1998 provides a **power for the Secretary of State** (SoS) to direct action (including legislation) should or should not be taken by a NI Minister in order to fulfil international obligations (defined as ‘any international obligation of UK’ other than EU law or ECHR rights, which are provided for separately in the Act). In contrast to wording of GFA power is permissive – the SoS ‘may’ intervene, and only when he/she ‘considers’ an act incompatible/ needed for international obligations. A similar power was vested in NI Departments over NI Councils in 2014.<sup>4</sup>

There have been occasions when the SoS and Westminster have intervened. This occurred when the DUP First Minister in 2007 blocked legislating for the **EU Gender Directive**.<sup>5</sup> In 2021 the SoS introduced regulations<sup>6</sup> providing a specific power of direction over the NI health authorities in order to commission abortion services in line with a **ruling by the UN CEDAW Committee** that NI law constituted ‘grave and systematic violations’ of CEDAW rights.

Notably however the SoS declined to make use of the s26 powers, and generally there has been resistance to human rights treaty-based obligations, and those from the bilateral agreements of the peace settlement, being considered part of the UK’s ‘international obligations’. This has led to numerous such commitments remaining unfulfilled, including duties relating to Irish language legislation.

The ‘**right to self-determination**’ provisions of the GFA contain specific provisions on ‘binding’ referendum in NI on the basis of a simple majority regarding the constitutional status of NI in the UK or as part of a sovereign united Ireland, with a concurrent referendum in the south of Ireland. Under the GFA, and its domestic legislation, the SoSNI is granted discretionary powers to call a referendum at any time but is also placed under a legal obligation to do so if it appears at any time that a majority would vote in favour of a united Ireland. Legal certainty issues have emerged in relation to this duty as the SoSNI has declined to confirm what criteria are being used to make this latter assessment.<sup>7</sup> There is a need for greater clarity, certainty and transparency around how the right to self-determination will be operationalised. The post-Brexit emergence of the concept of ‘reciprocal rights’ restricted to British and Irish citizens within the UK-Ireland Common Travel Area (CTA) also departs from previous practice of Irish citizens voting in referendums in NI, on grounds there is no reciprocal right in Ireland, leading to a lack of clarity over the franchise for a GFA poll.<sup>8</sup>

<p><b>(c) Human Rights Commissions</b></p> <p>The <b>GFA</b> guaranteed the creation of a new Northern Ireland Human Rights Commission (NIHRC) under Westminster legislation, with the 2003 Joint Declaration and St Andrews Agreements containing commitments to review and bring the NIHRC powers in line with the UN principles relating to national institutions for human rights (UN Paris Principles).</p>	<p>The NIHRC was set up under the Northern Ireland Act 1998 and operational in March 1999; It is currently accredited under the UN system as an ‘A status’ National Human Rights Institution, which requires compliance with the UN Paris Principles. There remain some gaps in the NIHRC’s powers, in part due to ‘national security’ exemptions over functions. The NIHRC’s powers to take a case in its own name were lost in 2018 but reinstated.<sup>9</sup></p> <p>The NIHRC’s compliance with the Paris Principles has been endangered by both significant cuts to its budget throughout the 2010s but also further to appointments by the SoSNI in 2020 that collectively were not in conformity with the Paris Principles.<sup>10</sup> The Joint Declaration (Annex 3 para 4) had committed that: “The British Government will also continue to ensure that appointments to the Commission are made in line with the Paris Principles.”</p>
Commitment	Status
<p><b>1.3 NI Bill of Rights</b></p> <p>The <b>GFA</b> delegated advising on rights, supplementary to the ECHR, to be included in a NI Bill of Rights, to the new NIHRC.</p> <p>Such rights were to draw on international standards and reflect the ‘particular circumstances of Northern Ireland’.</p> <p>The <b>2003 Joint Declaration</b> committed the British Government to legislate for the BoR ‘where required’; <b>St Andrews</b> committed the UK government to establishing a Bill of Rights Forum.</p> <p>Under the <b>NDNA</b> in 2020, a commitment was made to set up an Ad Hoc Assembly Committee to consider the creation of a Bill of Rights faithful to the stated intention of the GFA.</p> <p>The <b>GFA</b> also envisaged a <b>Charter of Rights</b> for the Island of Ireland.</p>	<p>After St Andrews the Bill of Rights Forum reported and subsequently the NIHRC in accordance with its GFA mandate issued its advice on the content of the BoR on 10 December 2008 to the UK government. The NIO issued a consultation paper that took a minimalist approach and argued that many of the rights were more relevant to a proposed UK or British Bill of Rights. This UK Bill of Rights ultimately did not proceed and the final report of its Commission, in December 2012, concluded that this process should not be used to ‘interfere in, or delay, the Northern Ireland Bill of Rights Process.’<sup>11</sup></p> <p>The UK Government however did not bring forward any legislative proposals for the BoR and subsequently added an additional prerequisite outside the terms of the GFA of ‘consensus’ from both unionist and nationalist parties on any rights included in the BoR. The Stormont House Agreement was limited to noting there was not currently ‘consensus’ for a BoR.</p> <p>The Ad Hoc Committee of the Assembly was established further to <b>NDNA</b> and currently continues to take evidence on the BoR. The Equality Coalition evidence to the Committee noted that “<i>the Bill of Rights could have prevented many of the issues that de-stabilised power sharing and contributed to its collapse (beyond RHI). This includes legislation and policy that would not have been lawful with the Bill of Rights in place. It also includes the diversion of Executive business into repeated attempts to enact rights-based provisions (many blocked from previous agreements) that would already have been in place (or already required as a matter of domestic law) had the Bill of Rights been enacted.</i>”<sup>12</sup></p>

	<p>Under the GFA there was also an intended link between the '<b>Petition of Concern</b>' mechanism and the Bill of Rights, whereby there would be a scrutiny process of compliance of legislation/a measure against the Bill of Rights (&amp; ECHR) whenever a Petition was tabled. This is further discussed in the next section.</p> <p>NIHRC and IHRC did not establish a <b>Charter of Rights</b> themselves but issued advice in 2011 to the two governments concluding a Charter of Rights was justifiable.<sup>13</sup> There has been no progress since.</p>
Commitment	Status
<p><b>1.4 Safeguards on the exercise of power: (a) The Petition of Concern</b></p> <p>The GFA intended that a 'Petition of Concern' when raised by 30 MLA's would usually lead to a Special Procedure Committee to examine whether the referred decision was in conformity with the ECHR/ NI Bill of Rights. A subsequent vote on the measure could then require support on a 'cross community' basis.</p> <p>There have been a number of reviews including following <b>St Andrews</b>, the <b>Stormont House Agreement</b> and the <b>Fresh Start Agreement</b>.<sup>14</sup></p> <p>Under <b>NDNA</b> there was further agreement to restrict the use of the Petition of Concern.</p>	<p>The <b>Petition of Concern</b> was never implemented as required by the GFA and NI Act, largely due to the way the Act and Standing Orders of the Assembly were drafted and applied. The Special Procedure Committee has never been established following a Petition of Concern. Instead of therefore being a mechanism linked to equality and human rights compliance the Petition instead notoriously became a vehicle that was deployed to block equality and rights initiatives and for party political purposes.</p> <p>Attempts further to other review processes to reform the Petition of Concern and return it to the intended purpose of the GFA did not proceed in the context of unionist opposition.<sup>15</sup> Further to <b>Fresh Start</b> changes were agreed but in the form of a voluntary protocol. Under <b>NDNA</b> some changes were agreed to return the Petition to its original intended aim, although most parties 'supported wider reform'.<sup>16</sup> <b>NDNA</b> did commit to amendments of the NI Act and Standing Orders, which requires Westminster legislation, in December 2020 the NIO confirmed it was its still its intention to do this 'when Parliamentary time allowed'.<sup>17</sup> No Petitions of Concern were tabled in the year since NDNA.<sup>18</sup></p> <p>Whilst returning to its original intention would provide some measure of resolution it would not prevent parties ignoring an assessment that legislation/a measure was entirely in conformity with equality and human rights standards but exercising a '<b>cross community veto</b>' to block it anyway. The situation is compounded as the votes of 'Other' Ministers or MLAs do not count in such votes.</p>
<p><b>(b) Other vetoes</b></p> <p>Under the <b>St Andrews Agreement</b> changes were made to the role of the NI Executive. This allowed most ministerial decisions to instead require the support of the full NI Executive if they were 'controversial' or</p>	<p>By contrast to the Petition of Concern other vetoes have continued to be regularly used since NDNA.</p> <p>In terms of the '<b>St Andrews veto</b>' an FoI in November 2020 revealed that post-NDNA the DUP had invoked cross community votes under this mechanism on six occasions. On three occasions the votes related to measures to further women's' reproductive rights and on two others the right to health (the other related to an SDLP request to extend the Brexit transition period).<sup>20</sup> The use of the</p>

<p>'significant'. Further changes to the GFA also meant that three ministers could require an Executive vote to instead be taken on a 'cross community' basis.<sup>19</sup></p> <p>The lack of any link to human rights standards, and instead the subjective reliance on what any party may consider 'controversial' turns the GFA intention on its head as the veto can (and regularly has been) used to block measures that further equality and human rights.</p>	<p>mechanism over reproductive rights related to early medical abortion services required by primary legislation, ultimately leading to the Secretary of State legislating in Westminster.<sup>21</sup> This raises the broader questions of this mechanism being used to block legal obligations. It was also notable that the highly publicised use by the DUP of this mechanism to block the UUP Health Ministers coronavirus restrictions measures in October 2020, may have been unlawful if the Bill of Rights had been in place.<sup>22</sup></p> <p>There was some reform of the 'St Andrews veto' after NDNA, with planning decisions removed from its scope, and limitations on its use in 'cross cutting decisions.' Its use however remains intact on matters any party deems 'significant; and 'controversial' that is outside the programme for Government.<sup>23</sup></p>
<p><b>c) Programme for Government (PFG)</b></p> <p>Under the <b>GFA</b> (para 20 strand 1) it states, <i>"The Executive Committee will seek to agree each year, and review as necessary, a programme incorporating an agreed budget linked to policies and programmes, subject to approval by the Assembly, after scrutiny in Assembly Committees, on a cross-community basis."</i></p> <p>This duty is given direct legal effect by virtue of Section 20(3) of the NI Act 1998.</p>	<p>The adoption of a PFG "incorporating an agreed budget linked to policies and programmes" is important in rights-terms as it can be the place for resourced rights-based commitments, but also inclusion of commitments in the PFG usually places their delivery outside the scope of the 'St Andrews Veto' meaning Ministers can progress such measures without the veto being able to block them.<sup>24</sup> (This clearly does not apply if adopting the PFG itself has been vetoed).</p> <p>There has been no PFG at all adopted by the NI Executive since the commencement of the 2016 mandate. A draft PFG was included in the NDNA document inclusive of key supporting equality strategies. A year on however no PFG had been adopted or consulted on (with consultation limited to an 'Outcomes Framework' for the PFG but not a GFA compatible PFG with budget-linked policies and programmes). An Assembly question as to whether the section 20(3) duty had been complied with since NDNA remains unanswered at the time of writing.<sup>25</sup></p>
<p><b>d) The Veto preventing matters being tabled for Executive Decisions</b></p> <p>Under paragraph 2.11 of the NI Ministerial Code<sup>26</sup> the inclusion of ministerial proposals on the agenda for the NI Executive must be agreed by both the First and deputy First Minister, giving in practice, either a veto. A commitment further to a <b>Fresh Start</b> providing that an item may not be blocked for</p>	<p>The provision of the Ministerial Code allows either the First or deputy First Minister to veto discussion and decision entirely by precluding it from the agenda of the meeting. It appears this is used regularly - including to block matters that constitute legal obligations. Since NDNA this mechanism has been used to prevent discussion of a timetable to implement the statutory duty to adopt strategies for Irish and Ulster Scots.<sup>27</sup> In 2018 the First Minister was found to have acted unlawfully by blocking Executive consideration of a bid from the Justice Minister David Ford for funding for legacy inquests despite the legal obligations of ECHR Article 2.<sup>28</sup></p>

<p>more than three meetings is not reflected in the binding ministerial code.</p>	
<p><b>e) The Section 75 Equality duties</b></p> <p>The GFA provided for: <i>“an Equality Commission to monitor a statutory obligation to promote equality of opportunity in specified areas and parity of esteem between the two main communities and to investigate individual complaints against public bodies.”</i></p> <p>There was also a UK intention to <i>“create a statutory obligation on public authorities in Northern Ireland to carry out all their functions with due regard to the need to promote equality of opportunity in relation to religion and political opinion; gender; race; disability; age; marital status; dependants; and sexual orientation.”</i></p>	<p>The Equality Commission was established and a statutory equality duty was legislated for under s75 of the NI Act. The second limb of the duty did not follow the GFA stipulation of a ‘parity of esteem’ duty but instead introduced a second duty to promote ‘good relations’, following contestation from the equality sector a safeguard was introduced to in theory subordinate this to the equality duty. The good relations duty was however undefined and has a long history of being misinterpreted and misused to obstruct rights based measures on grounds they were politically contentious (most notably housing and other socio-economic measures on the basis of objective need and Irish language provisions but also in some instances support for marriage equality, reproductive rights and other issues).<sup>29</sup> This has prompting heavy criticism from the Council of Europe treaty bodies.<sup>30</sup> The Equality Commission has since moved to promote a human rights compliant definition of Good Relations, although examples persist of misuse.<sup>31</sup></p> <p>There have also been widespread practices of non-compliance with the Equality Duty noted by both the Equality Coalition and Commission. The Commission also rarely used its powers of enforcement, and their exercise was often subject to delays.<sup>32</sup> In recent years compliance has gradually improved. The Commission has also adopted new procedures setting timeframes for decision making on use of its powers.<sup>33</sup></p> <p>Post <b>NDNA</b> there were also changes to the Guidance on the Ministerial Code produced by the Department of Finance (DoF) which strengthens the Equality Duty making Heads of Departments and Chief Executives responsible in their role of accounting officers “for compliance with Section 75”, among other matters.<sup>34</sup> This change mitigates against a scenario whereby a Minister hostile to equality can stifle application of the equality duty.</p>

**f) Civic Forum**

The Assembly is unicameral, but the **GFA** did provide for a civic forum comprising of members of the 'business, trade union, voluntary' and other sectors to "act as a consultative mechanism on social, economic and cultural issues"

The **Stormont House Agreement** and **Fresh Start** provided for a TEO appointed six person 'compact civic advisory panel' to meet regularly to consider key social, cultural and economic issues and to advise the NI Executive"

Under **NDNA** the parties "agreed that the existing Compact Civic Advisory Panel should be reformed to include a renewed membership" there would also be civic engagement on one or two issues a year and a commitment to one Citizens' Assembly a year.

The Civic Forum was set up from 2000-2002 and then suspended along with Assembly and not reconvened. An Executive Office review of the Forum took place in 2007. The forum was not reconvened.

The Compact Civic Advisory Panel was established with six members in December 2016 and met four times before being suspended on the subsequent collapse of devolution in 2017. The Minutes of these initial meetings were not publicly available.<sup>35</sup>

An Assembly question answered in February 2021 reiterated commitment to the NDNA provisions but confirmed that they had not yet been put into place.<sup>36</sup>

## 2. Economic, Social and Cultural Rights

Commitment	Status
<p><b>2.1 Anti-Poverty Strategy on basis of objective need</b></p> <p>Further to some references in the <b>GFA</b> and <b>Joint Declaration</b>, the <b>St Andrews Agreement</b><sup>37</sup> led to a statutory duty on the NI Executive to adopt a <b>strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on objective need.</b></p> <p>In 2020 <b>NDNA</b> committed to the development and implementation of Anti-poverty Strategy as a priority of the restored Executive. NDNA states: “The new Programme [for Government] and its key supporting strategies (Anti-poverty strategy, Industrial /Economic strategy and Investment strategy) will be underpinned by a budget and be ready for Executive sign-off and endorsement by the end of March 2020.” (para 4.11, annex b)</p>	<p>Under direct rule in November 2006 an inter-departmental anti-poverty and social exclusion strategy (“Lifetime Opportunities”) was issued. It made reference to 284,000 people living in urban areas of concentrated multiple deprivation, as well as pressures on rural communities. It affirmed “inequality still remains too high” the EQIA identifying greater risks of poverty for Catholics, nationalists, ethnic minorities, younger persons, divorced/ single/ separated persons, women, persons with a disability and persons with dependents. The delivery mechanism was to link the strategy to as a priority for departmental spending plans. Whilst there was passing reference to the Lifetime Opportunities Strategy in the 2011–2015 Programme for Government (PfG) it was never formally adopted by the NI Executive.</p> <p>In 2015 following litigation from CAJ the High Court found that the NI Executive had acted unlawfully in not adopting an anti-poverty strategy.<sup>38</sup> Ultimately all the parties that had been in the NI Executive (save the DUP) welcomed the ruling. Once the judgment was final in 2015 the adoption of a strategy was to be led by the new Department for Communities under the DUP. There was no tangible progress before the collapse of the institutions in 2017.</p> <p>The <b>NDNA</b> timeframe for the PfG and strategies, which coincided with the onset of the pandemic were not met. Subsequently the Department of Communities established an Expert Working group, and co-design panel on the Anti-Poverty Strategy which in March 2021 released its report providing a comprehensive blueprint of costed macro interventions that can eliminate poverty in NI.<sup>39</sup> The next stage of the process is for an inter Ministerial Group to meet in April and June with approval of the strategy timetabled for July, public consultation Aug-Nov and implementation in December 2021.<sup>40</sup></p>
Commitment	Status
<p><b>2.2 Minority Language rights including Irish language legislation</b></p> <p>The <b>GFA</b> provided for “respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland, the Irish language, Ulster-Scots and the languages of the various</p>	<p>The UK ratified the ECRML registering a range of specific commitments under Part III of the Charter for Irish many of which relate to the GFA commitments. the UK included Scots (and Ulster Scots) under the general part II provisions of the Charter. In the absence of the NIHRC proposed Bill of Rights the commitments are not directly enforceable in the courts; many remain either unfulfilled or compliance dependent on the Minister of the day.</p> <p>There were particular issues at the onset of the 2016 mandate when DUP Ministers arbitrarily adopted single</p>

ethnic communities [sic]”; for the ratification of the **ECRML** and a range of specific commitments towards the Irish language, including education, broadcasting, non-discrimination and promotion initiatives; The UK recommitted to this in the Joint Declaration.

The St Andrews Agreement commitments included that “The [British ] **Government will introduce an Irish Language Act** reflecting on the experience of Wales and Ireland” as well leading to statutory duties to adopt strategies for Irish and Ulster Scots.

The **NDNA** included three draft bills, one an Irish language act, the other covering Ulster Scots but also Ulster Britishness, establishing a commissioner and placing a statutory duty on the education sector to promote Ulster Scots, and the third covering an Office of Identity and Cultural Expression and repealing 1737 justice legislation that has the effect of banning the use of Irish in court documents. The commitment was to implement these bills within 100 days. Separately the UK made a commitment to ‘recognise Ulster Scots as a National Minority under the Framework Convention for National Minorities (FCNM)’. It also provided for a central translation hub.

(English-only) language policies in their Departments, including education. The Department for Communities interdepartmental Charter Implementation group ceased to meet and guidance on the Charter was removed from the website (and was only reinstated in 2020). A decision taken on the eve of Christmas 2016 by the Communities Minister to cut the modest (around £50k) and much commended Líofo bursary scheme (that allowed the children of low-income families to attend summer schemes in the Irish-speaking Gaeltacht to further language acquisition), was a significant factor in the collapse of the NI institutions.<sup>41</sup>

The UK government despite repeated calls from international treaty bodies and others did not discharge its commitment to introduce an **Irish language act** and instead has preferred to delegate the Act to the Assembly in full knowledge it will be vetoed. This became a touchstone issue regarding the reestablishment of the institutions. The **NDNA** bill constitutes a weakened version of the St Andrews Irish language act but does provide for a solid institutional model of an Irish language Commissioner taking a language standards-based approach (as in Wales). The weakness is in the potential for ministerial interference in the role. The **NDNA legislation** has still not been introduced over a year on. The NIHRC have been critical of the linkage between Ulster Scots and Ulster British in the second bill, in essence arguing that it risks sectarianising Ulster Scots whose speakers are drawn from across the community.

Despite constituting domestic legal obligations, the **Irish and Ulster Scots strategies** have never been adopted by the NI Executive. In the 2007-2011 mandate the then DUP Ministers announced an intention to instead introduce an ‘integrated strategy’ with the aim creating ‘parity’ between Irish and Ulster Scots; this was heavily criticised by the NIHRC and Council of Europe treaty body as damaging to both Irish and Ulster Scots and ultimately abandoned. In the subsequent mandate the then SF DCAL Minister consulted on Irish and Ulster Scots strategies. The NI Executive however declined to adopt them, and in 2017 the High Court in a case taken by Conradh Na Gaeilge found the Executive had acted unlawfully in not adopting an Irish language Strategy.<sup>42</sup> Following NDNA a recent UK report to the Council of Europe states that a DfC timetable for adopting Irish and Ulster Scots strategies had been blocked from the agenda of the NI Executive.<sup>43</sup>

It is not public what the intention is behind the NDNA commitment to recognise **Ulster Scots as a national minority** (and FoI request revealed no documents existed on it). ‘National minorities’ under FCNM national minorities refer to linguistic, ethnic or religious

	<p>minorities and Ulster Scots speakers have been long recognised by the UK as a linguistic minority. It is possible the intention is to now recognise Ulster Scots as an ethnic minority group. There has however been no consultation as to whether persons would wish to identify as such and to date the UK commitment has not been progressed.</p>
Commitment	Status
<p><b>2.3 Women’s full and equal political participation</b></p> <p>Among a number of rights which are affirmed in the GFA is “<i>the right of women to full and equal political participation.</i>” In the Joint Declaration the two governments reaffirmed commitments to this right and others affirmed in the GFA and stated they envisaged ‘many of’ them being given legislative effect though the Bill of Rights and Single Equality Bill. Other rights affirmed included the <b>right to equal opportunity in all social and economic activity across a range of protected grounds, and democratic rights</b></p>	<p>Whilst women’s full and equal political participation is affirmed as a right in the GFA there is no overarching mechanism to make it a reality. Implementation of UN Security Council Resolution 1325 on women, peace and security, which passed shortly after the GFA, would be one obvious mechanism with which to progress the commitment; there is also the framework provided by the UN Convention for the Elimination of all forms of Discrimination against Women (CEDAW). However, the UK, despite supporting the Resolution 1325, has declined to apply it to NI and there is no BoR or single equality bill. Civil society initiatives have continued.<sup>44</sup></p> <p>Following Brexit – in contravention with this right and the affirmation of ‘democratic rights’ in the same section of the GFA it appears the UK is likely to legislate to strip the vote in NI Assembly and Council elections from women (and men) who are EU26 nationals. Whilst Irish citizens remain EU citizens voting rights for MEPs have also gone and possibly also for referendums. These moves conflict with the Protocol commitment to ‘no diminution’ in these GFA listed rights as a result of Brexit (namely “the right to pursue democratically national and political aspirations” and “the right of women to full and equal political participation.”</p>
Commitment	Status
<p><b>2.4. Equality strategies and legislation: a) Civil Service Nationality Requirements</b></p> <p><b>St Andrews</b> committed to legislation in 2006 to reform “entry requirements to ensure access for EU nationals to posts in the Civil Service”</p>	<p>The UK did not legislate to end the ban (dating back to the 1700 Act of Settlement and the Aliens Restriction (Amendment) Act 1919) on EU nationals (including Irish citizens) taking up ‘public service’ civil service posts (which make up 25% of UK civil service posts). The NI Civil Service has creatively however not classified any of its posts as such to prevent the exclusion of Irish citizens, although UK Civil service posts in NI can still do so. Into 2021 the position was diminished further when the UK legislated to exclude EU26 citizens arriving after 1 January 2021 (the Brexit transition period) from all civil service posts.<sup>45</sup> In addition to reversing the commitment in the St Andrews Agreement this decision also conflicts with the commitment to ‘no diminution’ in GFA rights to equality of opportunity in economic activity as a result of Brexit.</p>

<p><b>b) Equality Strategies</b></p> <p>The <b>NDNA</b> contained a draft PfG that inclusive of “key supporting strategies” referencing: <i>the Anti-poverty strategy; a Racial Equality Strategy; a Disability Strategy; a Gender Strategy; a Sexual Orientation Strategy; an Active Ageing Strategy; a Children and Young People’s Strategy; a Childcare Strategy; a Child Poverty Strategy; and Irish Language &amp; Ulster Scots Strategies</i></p>	<p>In addition to the anti-poverty, Irish and Ulster Scots Strategies (which are legal obligations on the NI Executive and dealt with above) a number of the listed Equality Strategies have been progressed as follows:</p> <ul style="list-style-type: none"> <li>• Expert Working Group Reports providing blueprints for the Disability, Sexual Orientation (now LGBTQI+) and Gender Strategies have been taken forward and published by the Department for Communities, who have set a time frame of July for Executive sign off for consultation with a view to final adoption by December 2021. (However, such strategies have been blocked in the past and adoption is not a given).<sup>46</sup></li> <li>• An Active Aging Strategy has been adopted by Dept Communities and a Children and Young People’s Strategy - 2020-2030 was taken forward by the Dept Education and adopted by the NI Executive in December 2020.</li> <li>• A Racial Equality strategy 2015-2025 was adopted and some provisions implemented but others, including changes to legislation and a refugee integration strategy remain outstanding.<sup>47</sup></li> </ul> <p>There is no Childcare strategy and an existing child poverty strategy has been extended until 2022 (and interfaces with the anti poverty strategy).</p>
<p><b>c) Conflict related convictions</b></p> <p>In relation to persons with <b>conflict related convictions</b> –further to commitments in the <b>GFA &amp; Joint Declaration</b> following the <b>St Andrews Agreement</b> a Review Panel was established led by Professor Pete Shirlow on structural and legal barriers to persons with such convictions. This led to a commitment in the <b>Fresh Start Agreement</b> and an Executive Action plan in 2016 to “urgently adopt recommendations by the Review Panel” to amend fair employment legislation and issue guidance in respect of public sector recruitment.<sup>48</sup></p>	<p><b>Conflict related convictions</b> could have been dealt with by the Bill of Rights that proposed outlawing discrimination on grounds of ‘irrelevant criminal conviction.</p> <p>Further to the agreements Employers Guidance was progressed by TEO and advocates “Employers should ignore any conflict-related conviction unless it is considered to be materially relevant to the post.”<sup>49</sup></p> <p>However, long committed to changes to fair employment legislation (an exemption to which can be used to block discrimination claims by persons with conflict related convictions) has not yet been progressed.</p>

#### d) Citizenship Rights

The GFA (Article 1(vi) of the treaty) committed both states to **birthrights** for the 'people of Northern Ireland' to 'identify and be accepted as **British or Irish or both**' as well as mutual recognition of dual citizenship.

Article 1(v) binds the Government with jurisdiction to freedom from discrimination and equal treatment for all people in NI. Together and with broader provisions of the GFA, these Articles have been interpreted as not just conferring choice of citizenship, but to equality of treatment regardless of that choice. This has been regularly reaffirmed by the UK Government during the Brexit process.<sup>50</sup>

As a result of the *DeSouza* case, the then Prime Minister Theresa May reaffirmed the birth right principles as "absolutely central" to the GFA and committed to an urgent review a long term solution consistent with the GFA. Under **NDNA** the UK announced it had reviewed the arrangements and taking into account the GFA, would change the rules on how the 'people of NI' can exercise rights to family reunification, regardless of whether the person of NI held Irish or British citizenship (or both). There was also recognition that policy "should not create incentives for renunciation of British citizenship by those citizens who may wish to retain it."

Ireland amended its nationality legislation to make Irish citizenship an entitlement rather than automatic conferral in light of the GFA, the UK however did not, but continued to recognise for statutory purposes those who wished to solely be Irish citizens (including for the exercise of EU rights of Irish citizens in NI). This changed in the context of the 'hostile environment' and from 2012 the Home Office began to treat NI born Irish citizens as British with the purpose and effect that NI Irish citizens could no longer exercise EU rights to be joined by non-EU family members. This led to the long running legal challenge by Emma DeSouza, as well as a sharp increase in persons renouncing British citizenship in NI.

All of the above would have been avoided if the BoR inclusive of the recommended "**right of the people of Northern Ireland to hold British or Irish citizenship or both, with no detriment or differential treatment of any kind**" had been enacted. This provision would also have legally precluded a 'hard Brexit' which by its nature leads to differential and detrimental treatment between British and Irish citizens in NI.

The legal underpinning for equality of treatment between British and Irish citizens in NI at the time of the GFA was provided by EU free movement law. This has now been largely repealed as a result of Brexit and save for a reciprocal treaty on social security, replaced by limited and non-binding 'rights' of the UK-Ireland Common Travel Area. The UK however placed GFA citizenship birth rights per se outside the scope of its 'non diminution' commitment (although other relevant GFA rights are engaged).

Whilst the Theresa May review was never published the following the **NDNA** commitment the specific issue of family reunion for people of NI was addressed; eventually resulting in an amendment to UK immigration law permitting non-EU family members of 'relevant persons of Northern Ireland' to apply to the EU Settlement Scheme. This meant DeSouza and others caught by the 2012 policy change could in practice exercise their EU rights to be joined by family members (and led to the withdrawal of the DeSouza appeal). The extension to British and dual citizens in NI also embedded the GFA equality of treatment principle. However, the initiative was short term as it will end with the closing of the EU settlement scheme further to Brexit.

The NDNA scheme also did not amend the British Nationality Act 1981 in a manner compatible with the birthright provisions of the GFA. The NIHRC have published (in 2020) a legal analysis by barrister Alison Harvey which provides a blueprint has how British Nationality Law can be amended to be brought in line with the GFA, in a manner which addresses concerned

	<p>from some commentators over preventing statelessness and consideration for persons without legal capacity. There is presently however no UK Government commitment to take this forward.<sup>51</sup></p>
Commitment	Status
<p><b>2.5 Social Protection (welfare mitigations)</b></p> <p>The Stormont House and 2015 <b>Fresh Start</b> agreement provided for ‘top ups’ pr mitigations against the welfare cuts implemented through the Welfare Reform Act. NDNA, with the Fresh Start committing to £585 million of executive funds. <b>NDNA</b> committed to extensions of welfare mitigations beyond March 2020 as a priority.</p>	<p>Welfare mitigations were put into place following <b>Fresh start</b> shielding vulnerable persons from hardship from the welfare cuts. They did not cover the ‘Two Child Rule’ introduced subsequently by the UK government and identified as a key driver of child poverty.</p> <p>Welfare mitigations were extended, and in March 2021 plans were announced to legislate to make welfare mitigations permanent.<sup>52</sup> However in the draft budget for 2021-22 an EQIA identified no resources being made available to fund a range of recommended new welfare mitigations, including mitigations to offset the Two Child Rule. Permanent mitigation of welfare cuts, including the two child rule is recommended by the Dept Communities Expert Working group on the Anti-Poverty Strategy.</p>
Commitment	Status
<p><b>2.6 Inequality and segregation in housing</b></p> <p>The <b>GFA</b> affirmed the “right of freedom from sectarian harassment” and the “right to freely choose one’s place of residence” It also affirmed a ‘culture of tolerance at every level of society’ including initiatives to mixed housing as an essential aspect of Reconciliation. The 2003 <b>Joint Declaration</b> also referenced the need to tackle sectarianism and segregation and also referenced such initiatives for mixed housing.</p> <p>The 2014 <b>Stormont House Agreement</b> provided for a Commission on Flags, Identity, Culture and Tradition (FICT) to look at issues of flags and emblems. The <b>Fresh Start Agreement</b> provided for a Strategy and Executive action plan to ‘end paramilitarism’ and also provided for capital funding</p>	<p>Housing segregation and related housing inequality persist, with housing inequality for Catholics/nationalists continuing to get international attention within in the UN human rights machinery, particularly in relation to north Belfast.<sup>53</sup></p> <p>Since the GFA few official initiatives have dealt with the ongoing causal patterns of paramilitary intimidation – including sectarian and racist intimidation - from housing that reinforces housing segregation and inequality. There have been very few convictions despite high numbers of incidents of paramilitary intimidation.<sup>54</sup> There has been no notable operationalisation of “the freedom from sectarian harassment duty” under the GFA. The Executive Action plan to end paramilitarism deriving from the Fresh Start agreement contains no specific actions in relation to paramilitary involvement in housing intimidation (or broader sectarian and racist incidents) instead reducing segregation in housing is referenced in an action urging the Executive to accelerate its ‘good relations strategy’.<sup>55</sup></p> <p>Sectarian graffiti (e.g KAT/KAH) that reinforces housing segregation and inequality is often not tackled, nor does there tend to be intervention when flags are placed on lampposts for purposes of sectarian and racist intimidation of existing or potential tenants (the FICT report that may engage this issue has been completed but is yet to be published). The Independent Hate Crimes Review reporting at the end of 2020 recommended, among other matters, a statutory duty on the Housing</p>

for shared/integrated education to be used for 'shared housing projects.'

Housing is set as an Executive Priority in **NDNA** and a number of specific changes are committed to. There is a commitment to a specific housing outcome in the Programme for Government, which is to be "supported by robust programmes and actions." There is also a commitment to an "enhanced strategic focus within the Programme for Government on Ending sectarianism and robust supporting strategies and actions will be put in place."

Executive and other agencies to take reasonable steps to remove hate expression from public space.<sup>56</sup>

There has been a pattern of 'good relations' vetoes over new housebuilding in interface and largely unionist areas when (on the basis of objective need) most of the new residents are likely to be Catholics.<sup>57</sup>

The focus on building 'new shared' communities instead of making existing housing safe and accessible to all has at times fallen foul of the same problems, most notably in south Belfast where Loyalist and Union flags were placed at the entrance of a shared housing scheme, and subsequently Catholic residents were intimidated out.<sup>58</sup>

The **NDNA** commitment to house building was taken forward with a blueprint presented to the Assembly by the Communities Minister in November 2020.<sup>59</sup>

The **NDNA** commitment to a Programme for Government focus on ending sectarianism with supporting strategies and actions has not been put in place, nor has the commitment to a specific housing outcome and indicator with no programme for Government presently adopted, and a draft Outcomes Framework consulted on that removes the housing outcome indicator.

3. Civil and Political rights	
Commitment	Status
<p><b>3.1 Civic Space and situation of Human Rights defenders</b></p> <p>The GFA provided for rights including “<i>the right of free political thought</i>” “<i>the right to seek constitutional change by peaceful and legitimate means</i>” “<i>the right to freedom from sectarian harassment</i>”; and “<i>the right of women to full and equal political participation</i>” it also guaranteed incorporation of the EHCR in NI law.</p> <p>The GFA also provided a “<i>total and absolute commitment to exclusively democratic and peaceful means of resolving differences on political issues, and our opposition to any use or threat of force by others for any political purpose, whether in regard to this agreement or otherwise.</i>”</p>	<p>ECHR was incorporated which gives domestic legal effect to rights of freedom of expression and association without discrimination; it also placed procedural obligations for the independent investigation of human rights violations during the conflict.</p> <p>Despite this there has continued to be a climate where human rights defenders, academics, journalists, lawyers, politicians, trade unionists and others active in civic space, can face sectarian and misogynistic abuse, stigmatisation, demonisation, threats, and harassment. This creates a general chill factor for involvement, also at times leading to exclusion from civic space.</p> <p>The frequency of attacks has increased significantly in recent years in the context of wider use of social media – which has in particular been a forum for targeting threats and misogynistic and sectarian abuse, and for seeking to conflate human rights defenders with republican armed groups.</p> <p>There have also been political attacks from senior political and other figures on NGOs and lawyers working on NI legacy cases. There was also the arrest by the PSNI of two journalists, and the unlawful searches of their homes and media companies, following their uncovering and broadcasting of evidence of RUC collusion in the Loughinisland massacre. There have also been alarming incidents of paramilitary threats towards journalists, and a climate of hostility towards academics and others involved in constitutional debates despite the GFA guarantee of the right to ‘seeking constitutional change through peaceful and legitimate means’. This has increased in the context of increased constitutional conversations as a result of the impact and outworkings of Brexit.</p>
Commitment	Status
<p><b>3.2 Dealing with the Past: a) Legacy proposals</b></p> <p>Under the 2001 <b>Weston park</b> agreement commitments were made to public inquiries into a number of cases if recommended by a judge of international standing</p>	<p>Whilst other recommended public inquiries were taken forward by the British and Irish governments following the conclusions of Justice Cory, the British government has not discharged its commitment to hold an independent public inquiry into the killing of human rights lawyer Pat Finucane. Following the recommendation, the Inquiries Act 2005 was rushed through subordinating public inquiries to ministerial control. More recently the UK Supreme Court has found procedural obligations to independently investigate the</p>

<p>(appointing Mr Justice Cory).</p> <p>In the 2014 <b>Stormont House Agreement (SHA)</b> a blueprint for new transitional justice and truth recovery institutions to deal with the past was agreed. This followed many years of previous initiatives including the Consultative Group on the Past (Eames-Bradley) in 2007 (reporting in 2009). The SHA included provision for an Historical Investigations Unit (HIU), Independent Commission on Information Retrieval (ICIR), Oral History Archive and Implementation and Reconciliation Group.</p> <p>Under the <b>Fresh Start</b> Agreement, the commitment to establish the SHA institutions was reiterated.</p> <p>Under <b>NDNA</b> in January 2020 the UK committed to introduce the SHA implementation legislation within 100 days.</p>	<p>death have not been discharged; the Council of Europe Committee of Ministers have also reopened supervision of the case.</p> <p>SHA implementation was initially delayed by the UK insertion of a ‘national security veto’ in draft legislation (the veto generally refers to powers vested in UK Ministers to redact information out of independent HIU legacy investigation reports for victims’ families in order to conceal the role of state informants in the killing of their relative.) Ultimately in a long delayed consultation on legislation took place in summer 2018, with a majority of respondents supportive of the SHA. Into 2019 the Council of Europe continued to express ‘serious concerns’ about the lack of establishment of the SHA institutions, urging a timetable for implementation in an ECHR compliant manner. Following the December 2019 UK General Election the incoming Governments legislative programme (Queens Speech) committed to the Prompt implementation of the SHA. This was then reiterated in a commitment to legislate for the SHA by April 2020, in the <b>NDNA</b> agreement.</p> <p><b>However, on 18 March 2020 in a Written Ministerial Statement (WMS) at Westminster the Secretary of State for NI signalled the unilateral abandonment of the SHA.</b> The WMS signalled the UK would instead adopt an unclear alternative ‘fast track’ information recovery approach. The WMS was intentionally made on the same day as the UK government introduced the <i>Overseas Operations (Service Personnel and Veterans) Bill</i>. That Bill introduces a qualified presumption against prosecution (after a five year period) against members of the British armed forces who have served overseas (but not in Northern Ireland), WMS set out that the change as regards the UK position on the SHA was to “ensure equal treatment of Northern Ireland veterans and those who served overseas.”<sup>60</sup> The Joint Committee on Human Rights of the UK Parliament has found that the Overseas Bill “breaches the UK’s international legal obligations under international humanitarian law, human rights law and international criminal law.”<sup>61</sup> <b>A year on from the WMS no alternative proposals to the SHA have been put forward by the UK.</b><sup>62</sup></p>
<p><b>b) Victims</b></p> <p>The <b>GFA</b> envisaged the provision of victims services the <b>St Andrews</b> Agreement committed government to introducing legislation to establish a Victims Commission for Northern Ireland.</p>	<p>The Commission for Victims and Survivors was ultimately established in May 2008, under the Victims and Survivors (Northern Ireland) Order 2006. A Strategy for Victims and Survivors was issued in 2009 and in 2012 a Victims Forum was established along with in April 2012, a Victims and Survivors Service.</p> <p>The victims’ pension was delayed in the context of broader contestation to change the universal definition of a victim of the conflict found in the above legislation.<sup>63</sup></p>

<p>In relation to <b>reparations</b> the <b>SHA</b> also envisaged taking forward a pension of seriously injured victims of the NI conflict.</p>	<p>Ultimately in 2019 the pension ('victims' payments') was legislated for at Westminster with criteria excluding persons with certain conflict related-convictions. Initially there was further delay as the SF deputy First Minister objecting to the criteria declined to designate an implementation department. Designation took place following a legal challenge, yet delay continued as both First Ministers contested that funding from the UK had not been provided for the pension. In March in a u-turn the SoS stated UK monies could now be allocated, but these would be diverted from the resources that had been set aside to implement legacy institutions under the SHA.<sup>64</sup></p>
Commitment	Status
<p><b>3.3 Policing</b></p> <p>The <b>GFA</b> participants envisaged <b>policing</b> based on "on principles of protection of human rights and professional integrity" and provided for an Independent Commission (the Patten commission) to make recommendations for future policing arrangements. In the 2001 <b>Weston Park Agreement</b> the British government committed to implementing the Patten, including new legislation to "reflect more fully the Patten recommendations."</p> <p>Patten envisaged a temporary special measure to increase Catholic numbers and the PSNI being routinely unarmed in a peaceful context. St Andrews then stated that the temporary special measure (50:50 recruitment) would lapse once the Patten target had been achieved.</p> <p>In the area of <b>covert policing</b> and informant handling Patten recommended the downsizing, deinstitutionalisation and</p>	<p>The Patten Commission reported in 1999 but the initial implementation plan and proposals departed significantly from the report, with one Patten Commissioner responding that the report "has not been cherry-picked, it has been gutted." Following international pressure and the Weston Park commitments a new implementation plan and legislation were produced. The Policing Board as an overall oversight mechanism, local District Policing Partnership Boards (now Policing and Community Safety Partnerships) and separately the Police Ombudsman, as an independent complaints mechanism, were established and a binding PSNI Code of Ethics centred on the ECHR adopted. Sinn Féin did not recognise the new policing dispensation until after St Andrews.</p> <p>Composition on community background and gender has improved but is still short of the broader composition of the population, the temporary special measure (restricted to the former) was nevertheless discontinued in 2011. The issue was also regressed on both gender and community background during a period when the PSNI rehired into the police former retired officers as 'civilian' contractors, particularly – according to an Audit Office report, within the intelligence sections (where 97% of those rehired were former retired officers)</p> <p>At the time of writing in 2021, there are a number of broad concerns regarding regression in human rights compliant policing and respect for the oversight arrangements- including concerns that the Policing Board is being side-lined, this has recently manifested itself in the PSNI response to issues such as the introduction of Spit and bite hoods, the differential policing over the Covid regulations – in particular in relation to the Black Lives Matter protests, high profile investigative failures, and in the area of legacy, including the aforementioned arrests of journalists uncovering police collusion.</p>

<p>integration of RUC Special Branch within the PSNI, that ethical policy guidelines on informant handling be published, that informant handling only take place proportionately and with due regard to the law, and for a Commissioner for Covert Law Enforcement in Northern Ireland.</p> <p>Whilst Patten was to apply to all agencies involved in law enforcement, from 2007 the British government instigate the formal transfer of primacy for covert 'national security' policing away from the PSNI and to MI5. The <b>St Andrew's agreement</b> appendaged a paper (Annex E) setting out some limited safeguards.</p>	<p>There was limited progress in the area of covert policing. The NI <b>Covert Policing</b> Commissioner was not established nor informant ethical guidelines made public. It was only in the context of a Police Ombudsman investigation (Operation Ballast, ultimately published in 2007), that uncovered collusion between RUC Special Branch officers and a unit of a loyalist paramilitary group [the Report held there was no reason to believe that the findings were isolated but rather were highly likely to be systemic] that in October 2003 the PSNI instigated a 'major review' (the CRAG review) of all their informants, which resulted in around a quarter of them being let go, half of them as they were deemed "too deeply involved in criminal activity." The Ombudsman recommended further consideration of the Patten recommendations on Special Branch, advocating the need for broader organisational and cultural change.<sup>65</sup> Instead, however primacy was transferred to MI5 who sit outside the Patten accountability framework. It was subsequently revealed in litigation that the MI5 had internal guidelines on authorising informant criminality, with government lawyers stating in open court that the Guidelines did allow MI5 to authorise an informer to commit crimes up to and including murder.<sup>66</sup> The 'Third Direction' case challenging the ECHR compatibility of the Guidelines of MI5 and other security agencies, led to Government fast tracking the Covert Human Intelligence Sources (Criminal Conduct) Act 2021 through Parliament. The Act for the first time provides for a statutory basis to regulate informant criminality, but ultimately without express limits on the crimes that can be authorised.<sup>67</sup></p>
<p style="text-align: center;"><b>Commitment</b></p>	<p style="text-align: center;"><b>Status</b></p>
<p><b>3.4 Justice reform</b></p> <p>The <b>GFA</b> committed to a "wide-ranging review of criminal justice" and <b>Weston Park</b> committed the British Government to publishing a full implementation plan for the review and draft legislation. The <b>Joint Declaration</b> foresaw the appointment of an independent oversight commissioner over decisions on the Criminal Justice Review which "<i>constitutes a major programme of transformational change and will give particular weight to</i></p>	<p>The 'Review of the Criminal Justice System in Northern Ireland' was published in March 2000, with a range of recommendations, including those from a human rights perspective. Seeking implementation was a drawn out process but there was reform of the prosecutorial system with the creation of the Public Prosecution Service and the establishment of a code for prosecutors. There was limited initial progress in some major elements of the system, most notably the Prison Service, which was subject to a further independent Prison Review took place after the Hillsborough Castle Agreement.</p> <p>The devolution of justice ultimately took place in 2010 following the Hillsborough Castle Agreement, with the portfolio leading to a special arrangement for the appointment of the Justice Minister by the Assembly (to date two Alliance and one independent Minister have held the post).</p>

<p><i>modernisation, accountability, protection of human rights, ensuring a representative workforce and the effective performance of the criminal justice system.”</i></p> <p>The <b>Joint Declaration</b> also outlined models and issues for devolution of justice powers with the UK of a view to introduce legislation at the earliest opportunity but indicating it would retain responsibility for ‘excepted’ matters, including National Security. At <b>St Andrews</b>, the two governments envisaged that justice and policing powers would be devolved to the Assembly by May 2008. The 2010 <b>Hillsborough Castle Agreement</b> set out a timetable and model for devolution of policing and justice powers as well as a broader reform programme.</p>	<p>There is a highly complex interface with devolved justice powers and a raft of ‘national security’ exemptions retained by Westminster with unclear and shifting boundaries e.g. prisons are devolved but when prison officers engage in ‘national security’ work they cease to be accountable to the Prison Service and become ‘Officers of the Secretary of State’; power over the new ‘emergency’ legislation (JSA 2007) is retained by Westminster etc; and whilst policing is devolved but the legislation governing emergency type stop and search powers is not. Furthermore, the devolution order made clear a raft of ‘national security’ powers which have been retained by the NIO across the criminal justice system, with one document seeking to designate justice issues in the whole of the (pre-devolution) past as a ‘national security’ issue. There are also ‘national security’ exemptions to the powers of the oversight mechanisms (Criminal Justice Inspector, Policing Board, Police Ombudsman, Prisoner Ombudsman, Attorney General, Human Rights Commission etc).<sup>68</sup></p>
Commitment	Status
<p><b>3.5 Parading</b></p> <p>Following Drumcree In 1998 legislation established the Parades Commission to take decisions on restrictions on parades (this was extended in 2005 to counter protests to parades)</p> <p>The <b>St Andrew’s Agreement</b> provided for a strategic review of parading “with a view to developing an agreed long term strategy”. The <b>Hillsborough Agreement</b> provided for a DUP-Sinn Féin Working Group on Parades tasked with providing “new improved framework” on parades and public assemblies.</p>	<p>Following St Andrews the Strategic Review of Parades was established and published an interim report (which set out a new framework for decision making on parades based on the ECHR incorporating the GFA provision of ‘freedom from sectarian harassment’.) The Strategic Review was stood down without its final report ever being published.</p> <p>The subsequent Hillsborough Working Group on Parades was to build on its proposals. The Working Group Report was never published but draft legislation was consulted on. This envisaged decision making explicitly on ‘human rights grounds’ and also proposed a new body take over from the Parades Commission, controversially it also proposed extending lengthy parades-notification requirements to other static public assemblies. Consultation concluded but the DUP withdrew support for the bill following a vote of Grand Orange Lodge of Ireland to oppose it and the legislation was never introduced.</p> <p>No changes were ultimately made to the legislation following the Fresh Start Agreement. The Parades Commission and Public Processions Act 1998 therefore</p>

Under the **Fresh Start** Agreement commitments were made to reviewing options on the “remaining key issues which include the Code of Conduct, criteria and accountability could be addressed in legislation” by 2015.

remain as an independent body to make adjudications on parades and counterprotests to parades. The criteria in the Public Processions Act could be better aligned with the ECHR (and envisaged rights in the advised NI Bill of Rights relating to harassment and intimidation on sectarian and other protected grounds).

**CAJ, March 2021**

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<sup>1</sup> The Overseas Operations bill (which the Westminster Joint Committee on Human Rights has found “breaches the UK’s international legal obligations under international humanitarian law, human rights law and international criminal law.”<sup>1</sup>)– limits both ‘direct access to the courts’ and ‘remedies for breaches’ in relation to proceedings for past overseas war crimes in the NI Courts. A post-Brexit ‘Sovereign Borders Bill’ is also planned with a likely diminution of ECHR incorporation to facilitate the deportation of persons to countries where they risk being tortured. 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.

<sup>2</sup> <https://www.gov.uk/government/publications/protocol-on-irelandnorthern-ireland-article-2>

<sup>3</sup> <https://www.ihrec.ie/a-charter-of-rights-for-the-island-of-ireland/>

<sup>4</sup> <https://www.legislation.gov.uk/nia/2014/8/section/107>

<sup>5</sup> See <https://caj.org.uk/2018/05/31/is-it-westminsters-role-under-the-belfast-good-friday-agreement-to-legislate-on-northern-ireland-abortion-law/>

<sup>6</sup> The Abortion (Northern Ireland) Regulations 2021

<sup>7</sup> <https://www.irishtimes.com/news/ireland/irish-news/british-government-declines-to-set-out-criteria-for-a-border-poll-1.4457745>

<sup>8</sup> See <https://brexitlawni.org/library/resources/paragraph-52-briefing-paper/> page 7.

<sup>9</sup> <https://www.nihrc.org/news/detail/commission-comments-on-reinstatement-of-own-motion-powers>

<sup>10</sup> <https://www.theguardian.com/uk-news/2021/jan/11/high-status-of-northern-ireland-human-rights-body-being-put-at-risk>

<sup>11</sup> ‘*A UK Bill of Rights? - The Choice Before Us*’ Bill of Rights Commission to the UK government, 18 December 2012, The report recognizes the “*distinctive Northern Ireland Bill of Rights process and its importance to the peace process in Northern Ireland*”, noting that the Commission does not wish to “*interfere in that process in any way nor for any of the conclusions to be interpreted or used in such a way as to interfere in, or delay, the Northern Ireland Bill of Rights Process.*”

<sup>12</sup> Written Evidence to the NI Assembly Ad Hoc Committee on the Bill of Rights from the Equality Coalition Co-Conveners Patricia McKeown, Regional Secretary UNISON & Daniel Holder, Deputy Director, CAJ <http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/ad-hoc-committee-on-a-bill-of-rights/written-briefings/daniel-holder-and-patricia-mckeown/>

<sup>13</sup> <https://www.ihrec.ie/a-charter-of-rights-for-the-island-of-ireland/>

<sup>14</sup> For detail see: Implementing the ‘Petition of Concern’ CAJ Briefing Note, January 2018.

<https://caj.org.uk/2018/01/22/implementing-petition-concern-caj-briefing-note-january-2018-s469/>

<sup>15</sup> For detail see above.

<sup>16</sup> NDNA, part 2, paragraphs 10 & 11.

<sup>17</sup> <https://questions-statements.parliament.uk/written-questions/detail/2021-01-06/134274>

<sup>18</sup> The Second Report on the Use of the Petition of Concern Mechanism in the Northern Ireland Assembly, CP 362, January 2021. <https://www.gov.uk/government/publications/the-second-report-on-the-use-of-the-petition-of-concern-mechanism-in-the-northern-ireland-assembly>

<sup>19</sup> <https://caj.org.uk/2020/11/18/stormonts-vetoes-in-the-context-of-a-pandemic-an-equality-coalition-briefing-note/>

<sup>20</sup> For further information see: <https://eamonmallie.com/2021/03/even-if-alliance-beat-them-in-the-next-election-would-the-dup-still-be-able-to-veto-everything-at-stormont-by-daniel-holder/>  
<http://amanda.ie/stories/stormont-cross-community-veto-used-three-times-to-block-womens-reproductive-rights>

<sup>21</sup> <https://www.legislation.gov.uk/uksi/2021/365/contents/made>

<sup>22</sup> <https://caj.org.uk/2020/11/18/stormonts-vetoes-in-the-context-of-a-pandemic-an-equality-coalition-briefing-note/>

<sup>23</sup> <https://www.legislation.gov.uk/nia/2020/4/section/1/enacted>

<sup>24</sup> Section 20(4) NI Act 1998; the ‘St Andrews veto’ can be reinstated for a vote on a ministerial action on matters that are in the Programme for Government if both the First and deputy First Ministers agree.

<sup>25</sup> [AQW 14549/17-22](https://www.niassembly.gov.uk/assembly-business/committees/2017-2022/ad-hoc-committee-on-a-bill-of-rights/written-briefings/daniel-holder-and-patricia-mckeown/)

<sup>26</sup> <https://www.northernireland.gov.uk/topics/your-executive/ministerial-code>

<sup>27</sup> A recent UK report to a Council of Europe treaty body indicated that a time line for the adoption of both Irish and Ulster Scots strategies (both legal obligations under the s28D NI Act) had been put forward by the SF Communities Minister, but had been blocked for inclusion on the Executives Agenda: MIN-LANG (2021) IRIA 1, paragraph 176. <https://rm.coe.int/ukiria5rev-en/1680a0eef6>

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- <sup>28</sup> Hughes (Brigid) Application [2018] NIQB 30 <https://www.judiciaryni.uk/judicial-decisions/2018-niqb-30>
- <sup>29</sup> See the CAJ Unequal Relations report (2013) <https://caj.org.uk/2013/05/19/unequal-relations-policy-section-75-duties-equality-commission-advice-good-relations-allowed-undermine-equality/>
- <sup>30</sup> For analysis see: <http://rightsni.org/2017/03/council-of-europe-minority-rights-report-time-to-move-on-irish-language-act-and-end-abuse-of-the-good-relations-duty/>
- <sup>31</sup> <https://www.equalityni.org/Footer-Links/News/Employers-Service-Providers/Equality-Commission-advice-on-Good-Relations-in-Lo>
- <sup>32</sup> [https://www.equalitycoalition.net/?attachment\\_id=802](https://www.equalitycoalition.net/?attachment_id=802)
- <sup>33</sup> <https://www.equalityni.org/Investigations>
- <sup>34</sup> <https://www.finance-ni.gov.uk/publications/ministerial-code>
- <sup>35</sup> <https://www.irishnews.com/news/2017/08/21/news/stormont-s-civic-society-panel-paid-3-600-for-four-meetings-1115898/>
- <sup>36</sup> <http://aims.niassembly.gov.uk/questions/writtensearchresults.aspx?&qf=0&qfv=1&ref=AQW%2011193/17-22>
- <sup>37</sup> The GFA committed the British Government to rapid progress on “a new more focused Targeting Social Need initiative”. In the Joint Declaration the governments recognised “many disadvantaged areas, including areas which are predominantly loyalist or nationalist, which have suffered the worst impact of the violence and alienation of the past, have not experienced a proportionate peace dividend. They recognise that unless the economic and social profile of these communities is positively transformed, the reality of a fully peaceful and healthy society will not be complete.”
- <sup>38</sup> Committee on the Administration of Justice (CAJ) and Brian Gormally’s Application [2015] NIQB 59 <https://www.judiciaryni.uk/judicial-decisions/2015-niqb-59>
- <sup>39</sup> <https://www.communities-ni.gov.uk/publications/report-anti-poverty-strategy-expert-advisory-panel>
- <sup>40</sup> <https://www.communities-ni.gov.uk/articles/social-inclusion-strategies> (accessed March 2021).
- <sup>41</sup> For further detail see: CAJ submission to the Committee of Experts (COMEX) on the UK response to the 5th COMEX Report on UK compliance with the European Charter for Regional or Minority Languages (ECRML). <https://caj.org.uk/2021/02/08/submission-responding-to-uk-ecrml-update/>
- <sup>42</sup> Conradh Na Gaeilge’s Application and In the Matter of a Failure by the Executive Committee of the Northern Ireland Assembly to Comply with its Duty Pursuant to Section 28D of the Northern Ireland Act 1998 [2017] NIQB 27 <https://www.judiciaryni.uk/judicial-decisions/2017-niqb-27>
- <sup>43</sup> MIN-LANG (2021) IRIA 1, paragraph 176. <https://rm.coe.int/ukiria5rev-en/1680a0eef6>
- <sup>44</sup> For example Gender Principles <https://www.ulster.ac.uk/transitional-justice-institute/research/current-projects/gender-principles-for-dealing-with-the-legacy-of-the-past> see also: <http://www.niassembly.gov.uk/assembly-business/assembly-womens-caucus/gender-sensitive-assembly-manifesto-action-plan/>
- <sup>45</sup> Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020.
- <sup>46</sup> <https://www.communities-ni.gov.uk/articles/social-inclusion-strategies> (accessed March 2021).
- <sup>47</sup> <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2021-02-22&docID=327048#AQO%201600/17-22>
- <sup>48</sup> <https://www.northernireland.gov.uk/publications/tackling-paramilitary-activity-criminality-and-organised-crime-executive-action-plan>
- <sup>49</sup> <https://www.reviewpanel.org/support/employers/>
- <sup>50</sup> For further detail see: CAJ written evidence to the NI Affairs Committee inquiry on Citizenship and Passport Processes in NI <https://caj.org.uk/2021/02/25/written-evidence-on-citizenship-and-passport-processes-in-northern-ireland/>
- <sup>51</sup> As above.
- <sup>52</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-56467196>
- <sup>53</sup> See for example: <https://www.pprproject.org/local-rights-bodies-back-equality-can%e2%80%99t-wait-call-for-urgent-action-on-inequality>
- <sup>54</sup> <https://thedetail.tv/articles/housing-intimidation-in-northern-ireland-more-than-2-000-incidents-but-only-32-convictions>
- <sup>55</sup> <https://www.northernireland.gov.uk/publications/tackling-paramilitary-activity-criminality-and-organised-crime-executive-action-plan>
- <sup>56</sup> <https://www.justice-ni.gov.uk/publications/hate-crime-legislation-independent-review>
- <sup>57</sup> See McVeigh, Robbie *Sectarianism: Key Facts*, (Equality Coalition, 2020).
- <sup>58</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-41424906>

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- <sup>59</sup> <https://www.communities-ni.gov.uk/news/housing-statement-communities-minister-caral-ni-chuilin-3-november-2020>
- <sup>60</sup> <https://www.gov.uk/government/news/addressing-northern-ireland-legacy-issues>
- <sup>61</sup> <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/120321/operations-service-personnel-and-veterans-bill-is-unjustifiable-ineffective-and-will-prevent-justice-from-being-done-say-joint-committee-on-human-rights/>
- <sup>62</sup> For further detail on the sequence of events from the SHA see: <https://caj.org.uk/2021/02/02/model-bill-team-response-to-the-special-rapporteur-on-the-promotion-of-truth/>
- <sup>63</sup> <https://www.legislation.gov.uk/nisi/2006/2953/article/3>
- <sup>64</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-56461179>
- <sup>65</sup> See <https://caj.org.uk/2012/11/19/policing-dont-see/>
- <sup>66</sup> See 'Government lawyer tells court MI5 officers could authorise murder' The Guardian 27 January 2021
- <sup>67</sup> For further information, see the joint briefing to Parliament by the Third Direction applicants. <https://caj.org.uk/2020/10/01/briefing-for-second-reading-of-the-covert-human-intelligence-sources-criminal-conduct-bill/>
- <sup>68</sup> 'The national security doctrine in Northern Ireland legislation' NI Legal Quarterly Vol. 67 No. 1 (2016): Spring <https://nilq.qub.ac.uk/index.php/nilq/article/view/97>