

Written Submission - Universal Periodic Review of the United Kingdom, 50th session of the UN Human Rights Council (October-November 2022)

Impunity and accountability for conflict-related human rights violations in Northern Ireland

1. The Committee on the Administration of Justice (CAJ) is an independent human rights NGO with cross community membership in Northern Ireland and beyond. It was established in 1981, campaigns on a broad range of human rights issues and is a UK member of the International Federation of Human Rights (FIDH).¹

Background summary: Good Friday Agreement 1998

2. The focus of this written submission relates to accountability for human rights violations during the Northern Ireland conflict ('The Troubles'), which occurred from around 1968 to the (UK-Ireland) Belfast/Good Friday Agreement of 1998 (GFA).
3. The GFA peace agreement took forward other conflict resolution measures but not a transitional justice mechanism. The GFA committed the UK to the incorporation of the European Convention on Human Rights (ECHR) into Northern Ireland law, it also committed to a supplementary Bill of Rights for Northern Ireland.²
4. The incorporation of the ECHR was taken forward under the Human Rights Act 1998, including giving domestic effect to the duties to ensure independent investigations into potential violations of the right to life and torture/inhuman and degrading treatment under Articles 2 and 3 ECHR. The future of the Human Rights Act is now under threat from the UK Government.³
5. The Bill of Rights is to be legislated for by the UK Parliament and contain additional rights to the ECHR as advised by the Northern Ireland Human Rights Commission in 2008.⁴ Among the rights advised by the Commission for incorporation are duties to ensure all conflict-related violations of the right to life be independently investigated.⁵ The UK Government has however not legislated for the Bill of Rights.⁶

¹ Since 2014, CAJ has operated as the NGO partner in the 'Model (SHA legacy) Bill Team' alongside academics from the School of Law, Queen's University Belfast; this work has a dedicated website:

<https://www.dealingwiththepastni.com/>

² There have been a range of other rights-based commitments of the peace settlement that have not been implemented. In 2021 we produced a mapping report detailing the status of implementation of such commitments. CAJ '[The unimplemented rights commitments of the peace settlement 23 years on from the Belfast/Good Friday Agreement: A mapping exercise](#)' March 2021

³ See: <https://caj.org.uk/2022/03/10/caj-responds-to-human-rights-act-consultation/>

⁴ NIHRC: [A Bill of Rights for Northern Ireland Advice to the Secretary of State for Northern Ireland](#), 10 December 2008

⁵ As above, page 62 "Legislation must be enacted to ensure that all violations of the right to life relating to the conflict in Northern Ireland are effectively investigated. Any mechanisms established must be fully in compliance with international human rights law."

⁶ A UK-Ireland agreement in 2020 ([New Decade New Approach](#)) to restore the Northern Ireland power sharing institutions started a new process for developing the Bill of Rights with an Ad Hoc Committee of the Northern

6. The GFA had led to the establishment of the Northern Ireland Human Rights Commission as a National Human Rights Institution (NHRI) for the jurisdiction. For over a decade the UK government has cut the funding to the NHRI (as well as to the national equality body). Along with other issues relating to compliance with the Paris Principals the funding cuts have led to the Sub-Committee on Accreditation of The Global Alliance of National Human Rights Institutions (GANHRI), recently declining to reaccredit the Northern Ireland Human Rights Commission with its 'A' status.⁷

Transitional justice – Stormont House Agreement 2014

7. After lengthy negotiations between the British and Irish Governments and political parties in the Northern Ireland Executive, the UK-Ireland adopted the 2014 Stormont House Agreement (SHA). The SHA provided for a number of new institutions to conduct investigations and truth recovery into conflict related incidents. This included an Historical Investigation Unit (HIU) and an Independent Commission on Information Retrieval (ICIR).
8. Further to recommendations from the UN Human Rights Committee in 2015, welcoming the SHA, and a report from UN Special Rapporteur Pablo DeGreiff in 2016, the previous Universal Periodic Review of the United Kingdom included the following recommendations:

Continue negotiations on transitional justice issues and implement transitional justice elements of the Stormont House Agreement (Australia);

Increase the necessary resources to the service of the Coroner to allow him to carry out impartial, swift and effective investigations on all the deaths linked to the conflict in Northern Ireland (Switzerland);⁸

9. Despite regular UK commitments to implement the Stormont House Agreement (to UN bodies, the Council of Europe and domestically) the UK delayed in doing so. The new UK Government of December 2019 renewed its commitments to implement the SHA by March 2020.⁹ However in March 2020 it instead announced a unilateral departure from the SHA. This announcement coincided with the introduction of legislation into the UK Parliament designed to provide impunity for past overseas military operations.¹⁰ It occurred in the context of a small number of legacy

Ireland Assembly (the unicameral legislature). The work of the Committee was impeded but it [nevertheless produced a final report](#). Four of the five parties in the power sharing administration stated their support for the Bill of Rights in this process, and there is broad cross-community support for the Bill of Rights. The present UK Government however declined to take forward the Bill of Rights.

⁷ See [GANHRI Sub-Committee on Accreditation Report – October 2021](#)

⁸ A/HRC/36/9 'Report of the Working Group on the Universal Periodic Review: United Kingdom of Great Britain and Northern Ireland' 14 July 2017, paragraphs 134.157 and 134.156

⁹ Among other commitments the incoming UK government in its December 2019 legislative programme committed to the "prompt implementation" of the SHA. A UK-Ireland Agreement of January 2020 committed to legislating for the SHA within 100 days. For further detail see: <https://caj.org.uk/2020/04/27/submission-committee-of-ministers-april-20/>

¹⁰ Now the Overseas Operations and Service Personnel Act 2021. For further detail see: <https://caj.org.uk/2021/02/02/model-bill-team-response-to-the-special-rapporteur-on-the-promotion-of-truth/>

prosecutions of former members of the UK military for conflict related killings in Northern Ireland, including the 1972 Bloody Sunday massacre.¹¹

10. No further detail was set out as to the UK intentions during 2020 with the Council of Europe Committee of Ministers issuing an Interim Resolution in December 2020 expressing ‘profound concern’ that the *“UK had not provided any further information on its proposed approach to legacy investigations since the Written Ministerial Statement of 18 March 2020, despite an express request from the Committee”* and calling upon the UK *“to follow up on their previous commitments to introduce legislation in the UK Parliament to implement the SHA.”*¹²
11. On 14 July 2021 the UK Government published a Parliamentary Command Paper *“Addressing the legacy of Northern Ireland's past.”*¹³
12. This UK Command Paper entirely departed from the SHA and proposed a legacy bill that would include a statute-bar on investigating conflict related incidents and end judicial activity across a spectrum of criminal cases and current and future civil cases and coronial inquests, along with a broad unconditional and unqualified amnesty for conflict related offences. Academic colleagues have assessed the proposed UK amnesty as broader in scope than that introduced in Chile under General Pinochet.¹⁴
13. The UK proposed to instead establish a new legacy body, to ‘recover information’ in relation to conflict deaths and serious injuries, but the Command Paper restricts its powers to a desktop review of papers and information volunteered through statements. This body would therefore have fewer powers than both existing residual mechanisms and the institutions envisaged under the SHA.
14. We strongly welcome and endorse the joint statement on the 10 August 2021 by the Special Rapporteur Mr. Fabián Salvioli alongside Mr. Morris Tidball-Binz, Special Rapporteur on extrajudicial, summary or arbitrary executions, expressing *“serious concern about the UK Government's plan to ban all prosecutions, impede investigations, and preclude victims' civil claims in connection with “the Troubles” in Northern Ireland, which would effectively institute a de-facto amnesty and blanket impunity for the grave human rights violations committed during that period.”* We fully concur with the Special Rapporteurs that the UK proposals will thwart victims’ right to truth and to an effective remedy and place the UK *“in flagrant violation of its international obligations”*.¹⁵ This concern was echoed in the subsequent report by Mr Salvioli to the Human Rights Council.¹⁶

¹¹ For a critique of the official narrative such prosecutions constitute a ‘witch hunt’ against the military see pages 8-16 <https://www.dealingwiththepastni.com/project-outputs/project-reports/prosecutions-imprisonment-and-the-stormont-house-agreement-a-critical-analysis-of-proposals-on-dealing-with-the-past-in-northern-ireland>

¹² CM/ResDH(2020)367 https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a097b6

¹³ <https://www.gov.uk/government/publications/addressing-the-legacy-of-northern-irelands-past>

¹⁴ <https://www.dealingwiththepastni.com/project-outputs/project-reports/model-bill-team-response-to-the-uk-government-command-paper-on-legacy-in-ni>

¹⁵ OHCHR, ‘Press release: UN experts voice concern at proposed blanket impunity to address legacy of “the Troubles” in Northern Ireland’, 10 August 2021.

¹⁶ A/HRC/48/60/Add.2 Follow-up on the visits to Burundi, the United Kingdom of Great Britain and Northern Ireland and Sri Lanka, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli 5 August 2021.

15. In September 2021, the Council of Europe Commissioner for Human Rights, Dunja Mijatović, published correspondence to the UK in which she had warned that the proposals under the Command Paper “*would undermine human rights protections and would cut off avenues to justice for victims and their families*”. Further stating that “*If adopted, the plan would lead to impunity and cannot be the foundation on which transitional justice is built.*”¹⁷ The correspondence raises concerns about the conflict with the UK obligations under the ECHR and the Command Paper proposals which include the introduction of:

“a statute of limitations for all Troubles-related crimes, which would put an end to all ongoing and any future attempts at prosecution. This is accompanied by a statutory bar on the Police Service of Northern Ireland (PSNI) and Police Ombudsman to investigate Troubles-related incidents, as well as further steps to end all judicial activity in this area with regard to current and future criminal and civil cases and inquests.”¹⁸

16. The Commissioner states that ECHR compliance is “*particularly endangered by the proposed shutting down of the above-mentioned avenues, and their replacement with an information recovery body with limited investigatory powers that would fall short of the requirements under the ECHR, and which would mainly carry out investigations on request of next of kin.*”¹⁹

Member States of the Human Rights Council may wish to echo the concerns expressed by the Special Rapporteurs that the UK proposals would breach their international human rights obligations, call for the withdrawal of the UK Command Paper, and for the UK to honour its previous commitments and legislate for the Stormont House Agreement in a manner consistent with its international human rights obligations.

The Universal Periodic Review process may also wish to press the UK on the related matters of: the threat to the domestic incorporation of the ECHR; the failure to legislate for the Northern Ireland Bill of Rights; and for full UK compliance with the Paris Principles in relation to the Northern Ireland Human Rights Commission.

Further background detail on the transitional justice mechanisms

17. Further to the peace process the 1998 (UK-Ireland) Belfast or Good Friday Agreement (GFA) was ratified by referendum in Ireland North and South and incorporated as a bilateral treaty. The Agreement contained conflict resolution provisions including early prisoner release, demilitarization, decommissioning and policing and justice reform. There was no transitional justice mechanism, but also no amnesty and the GFA obliges the incorporation of the European Convention of Human Rights (ECHR) into Northern Ireland law, with direct access to the courts and remedies for victims of ECHR violations.²⁰

18. At that time the justice and investigative mechanisms in Northern Ireland were not capable of delivering independent and effective investigations into conflict-related

¹⁷ <https://www.coe.int/en/web/commissioner/-/northern-ireland-legacy-proposals-must-not-undermine-human-rights-and-cut-off-victims-avenues-to-justice>

¹⁸ As above.

¹⁹ As above.

²⁰ <https://www.gov.uk/government/publications/the-belfast-agreement>

deaths to the standards required under the ECHR. This was affirmed in a series of rulings in cases, taken by CAJ and others to the European Court of Human Rights (ECtHR), which were delivered between 2001-2003. In response, the UK agreed a remedial ‘package of measures’, involving significant reforms to justice and policing oversight institutions.²¹

19. The ‘package of measures’ in practice faced numerous obstacles including limitations and obstruction from state agencies. Supervision of the ECtHR judgements remains open and in 2014 the British and Irish Governments and parties to the power sharing Northern Ireland Executive (established under the GFA) agreed a fresh approach in the Stormont House Agreement. This provided for the replacement of the package of measures with new legacy institutions focusing largely on truth recovery but also keeping open a justice route. These were:
- *Historical Investigations Unit (HIU)*: an independent body with full police-like powers to investigate unresolved conflict-related deaths and produce Family Reports, providing both a possible route to justice and truth recovery.
 - *Independent Commission on Information Retrieval (ICIR)*: independent internationally immune body to receive protected information in confidence and pass to families, on which British and Irish Governments agreed a treaty.
 - *Oral History Archive*.
 - *Implementation and Reconciliation Group*, working on themes and patterns.
 - The continuation of Coronial Legacy Inquests as a separate process (a civil judge-led inquisitorial process establishing how the deceased died without deciding the question of criminal or civil liability).
20. The Human Rights Committee, in its Concluding Observations on the UK in 2015 (CCPR/C/GBR/CO/7) welcomed the 2014 SHA, and called on the UK “*as a matter of particular urgency*” to ensure “*that independent, impartial, prompt and effective investigations, including those proposed under the Stormont House Agreement, are conducted to ensure a full, transparent and credible account of the circumstances surrounding events in Northern Ireland with a view to identifying, prosecuting and punishing perpetrators of human rights violations, in particular the right to life, and providing appropriate remedies for victims;*”²²
21. The Human Rights Committee selected this issue as part of its urgent follow up procedure, noting a year later the lack of progress by the UK. The Council of Europe has also called for the implementation of the SHA investigative mechanisms in a human rights complaint manner and expressed profound concerns at the delay in doing so.²³

²¹ ‘Cases Concerning the Actions of the Security forces in Northern Ireland’ or ‘McKerr Group of Cases’

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a097b6

²² CCPR/C/GBR/CO/7 [7] ‘[Accountability for conflict-related violations in Northern Ireland](#)’

²³ The Committee of Ministers issued its most recent Interim Resolution in these cases in December 2020: https://search.coe.int/cm/pages/result_details.aspx?ObjectID=0900001680a097b6

22. In 2016 the then Special Rapporteur on transitional justice Pablo de Grieff conducted a visit to the UK focusing on Northern Ireland legacy issues. This was recently subject to a five year review by the current rapporteur.²⁴
23. The UK prevaricated over implementation of the SHA. In 2018 the UK ultimately conducted a public consultation (showing widespread support for the SHA, and opposition to an amnesty).²⁵ Following this the UK made repeated commitments to the Council of Europe and domestically to implement the SHA, including in the (UK-Ireland) *New Decade, New Approach* deal that restored the power-sharing Northern Ireland government in January 2020, which committed to legislating for the SHA within 100 days.²⁶
24. However, in March 2020 in the Ministerial Statement to the UK Parliament the UK unilaterally departed from the SHA and announced it was pursuing an alternative approach of ‘desktop review’ after which cases would be permanently closed. The announcement was intentionally made on the same day the UK introduced its ‘Overseas Operations’ bill, providing impunity for past human rights violations in international wars. The departure from the SHA was presented in terms of providing similar protections for UK military veterans in NI. This occurred in a context whereby the residual ‘package of measures’ had led to a handful of prosecutions of soldiers.²⁷
25. No further detail was set out by the UK until the July 2021 Command Paper which set out an intention not just to introduce sweeping amnesty, but also legislating to end all meaningful investigations and legal proceedings, including:
- a) Ending all prosecutions for conflict related offences, including stopping ongoing cases already before the courts.
 - b) Ending all police investigations for conflict related offences.
 - c) Ending all Police Ombudsman Investigations into legacy deaths.
 - d) Ending all conflict related coronial inquests.
 - e) Ending the power of affected families to take civil proceedings.
26. In addition to the SR concerns, there has been a widespread rejection of the UK proposals from human rights and victims NGOs, the Irish government and all parties in the Northern Ireland Executive – with parties unanimously passing a motion in the legislature (Northern Ireland Assembly) expressing a rejection of the UK proposals which it stated “*do not serve the interests, wishes or needs of victims and survivors nor the requirements of truth, justice, accountability, acknowledgement and reconciliation*”²⁸

²⁴ A/HRC/48/60/Add.2 and <https://caj.org.uk/2021/02/02/model-bill-team-response-to-the-special-rapporteur-on-the-promotion-of-truth/>

²⁵ See pgs 12 and 21: Addressing the Legacy of the Past, Analysis of the Consultation Responses: <https://www.gov.uk/government/news/government-publishes-summary-of-responses-to-legacy-consultation>

²⁶ For further detail see: <https://caj.org.uk/2021/02/02/model-bill-team-response-to-the-special-rapporteur-on-the-promotion-of-truth/>

²⁷ For a critique of the official response to prosecutions of soldiers see: <https://www.dealingwiththepastni.com/project-outputs/project-reports/prosecutions-imprisonment-and-the-stormont-house-agreement-a-critical-analysis-of-proposals-on-dealing-with-the-past-in-northern-ireland>

²⁸ <https://www.bbc.co.uk/news/uk-northern-ireland-57892882>

Inquests and other residual mechanisms of the package of measures

27. The 2017 Universal Periodic Review into the UK specifically recommended necessary resources for the Coroner to carry out civil inquests into deaths. In 2016 Legacy Inquest Unit had been proposed by the NI Judiciary to discharge Article 2 ECHR obligations for legacy inquests, with a five year plan for completion. A delay was then caused by the UK withholding the resources required to set up the Legacy Inquest Unit, including the blocking of a NI Department of Justice funding bid by the Northern Ireland First Minister. Following litigation the courts declared this blockage unlawful in 2018 and funding was ultimately announced in February 2019. This was welcomed by the Council of Europe who sought Legacy Inquests to be taken forward without further delay.²⁹
28. The Legacy Inquest Unit has commenced delivery of its programme of work. Most prominently this has included the May 2021 inquest verdict into the 1971 Ballymurphy Massacre, in which the coroner found the 10 civilians shot dead by the British army were ‘entirely innocent’.³⁰ However, as with other current mechanisms, the UK’s present intention, set out in its Command Paper, is to legislate to immediately close down these legacy inquests.

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²⁹ CM/Del/Dec(2019)1340/H46-30

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016809375a1

³⁰ <https://www.judiciaryni.uk/ballymurphy-inquest> see also <https://www.bbc.co.uk/news/uk-northern-ireland-56986784>