

The Northern Ireland peace process and unresolved issues: A guide and lessons learnt



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1. Executive summary: placing equality and human rights at the centre

1. This research was commissioned by Rights & Security International (RSI) with the goal of identifying lessons from the Northern Ireland (NI) peace process for civil society groups globally that seek to address unresolved security-related human rights issues in conflict or post-conflict societies.
2. RSI's institutional goals informed the scope of the research, and the most salient of these are:
 - a. Achieving non-discriminatory, rights-respecting security laws and policies;
 - b. Ensuring that governments are accountable for their security-related actions and that the rule of law applies to all they do—including in the name of 'national security';
 - c. Making human rights central to UN and regional institutions' approaches to security and counterterrorism; and
 - d. Ensuring that private businesses stand firm against government pressures to violate rights as part of 'security' measures, and that enterprises do not take advantage of state security powers in ways that harm rights.
3. The study is informed by existing literature on the period of conflict in NI known as 'the Troubles' (from approximately 1968-1998) and the peace process in NI. These materials were created by academics, non-governmental organisations and legal experts, and the research process also involved reviewing legal judgments. In terms of scope, this research concentrated on the aspects of NI's peace process that are linked to the concept of security, and temporally on events following the Belfast (Good Friday) Agreement 1998 (the B/GFA). We also conducted five semi-structured interviews with individuals who have direct experience with the security services in NI, or expert knowledge of security issues in NI and internationally. We highlight at the outset that interviewees were unanimous in stating that a robust framework of human rights protection and accountability was and is necessary for continued peace in NI.

A robust framework of human rights protection and accountability was and is necessary for continued peace in Northern Ireland.

4. Accordingly, in assessing the success of the B/GFA, we looked beyond the official end to decades of conflict in NI; questioned whether the cessation of violence, decommissioning of weapons held by paramilitaries and radical reforms to policing are sufficient evidence of the success of the B/GFA; and concluded that the experience of NI demonstrates that, to achieve peace and reconciliation in conflict and post-conflict societies across the globe, we must attain the goals outlined above. We also noted that the introduction of the Human Rights Act (HRA) 1998 in the United Kingdom (UK) firmly cemented the commitment in the B/GFA to give victims of human rights abuses direct access to the courts for redress, including for abuses that were carried out in the name



of protecting security. This commitment has had some success, following the application of the HRA in the courts.

5. Counter-terrorism remains an excepted matter in the devolution agreement: that is, the national government, rather than the Northern Ireland government, has the power to make policy and other decisions about counter-terrorism in NI. Therefore, NI continues to be subject to all the same counter-terrorism legislation as the rest of the UK. The applicability of these measures to NI is problematic – as it is elsewhere in the UK – in human rights terms, due to the intrusive, broad and unaccountable powers that various pieces of UK law create. However, there is also counter-terrorism legislation that is specific to NI: in 2007, the UK government introduced the Justice and Security (Northern Ireland) Act (JSA). The purported rationale for the JSA was the recognition that many of the existing security measures in NI were no longer necessary following the end of the most intense period of the violence in the region; at the same time, the government believed it was not feasible to have the same counter-terrorism powers in Northern Ireland as existed in Great Britain (GB). To this end, the aim of the JSA was to begin the normalisation of security practices in NI.¹
6. One key and controversial additional police power in NI comes under section 21 of the JSA, which permits police to stop and question, or stop and search, people without any suspicion that the person has committed a crime. These powers have been especially controversial due to the way the Police Service of Northern Ireland (PSNI) has used them. We concluded that a highly important step toward addressing perceptions of discriminatory policing and disproportionate use stop-and-search powers would be for the PSNI to display transparency in its use of these powers, including by collating and publishing data on the community background of the people subjected to these powers. This transparency principle would be broadly applicable to all conflict and post-conflict societies to ensure equality, non-discrimination and justice, and also to generate (and justify) public trust in any new institutions created during a period of post-conflict security reform.

Women’s contributions to the peace negotiations were essential to securing the B/GFA, but the NI example also shows the negative impacts of failing to secure those voices on an ongoing basis.

7. We also reviewed the gendered aspects of reform in NI. Women’s contributions to the peace negotiations were essential to securing the B/GFA, but the NI example also shows the negative impacts of failing to secure those voices on an ongoing basis. In contrast to reforms to policing that adopted a form of affirmative action to ensure recruitment from both of the predominant religious/cultural groups in NI, for instance, there was no affirmative action undertaken to secure better representation of women

¹ [Justice and Security \(Northern Ireland\) Act 2007](#), Explanatory Notes, para. 3.



in politics or other aspects of public life. As Monica McWilliams, co-founder of the Northern Ireland Women’s Coalition and former Member of the Legislative Assembly (MLA), suggested in an interview, one of the lessons learned could be that ‘If we will not do [affirmative action] willingly, then you need to impose it.’ We also noted with concern that violence against women and girls remains a significant problem in NI; we believe that the failure to secure women’s rights on the political stage can contribute to this culture of misogyny and to apathy in addressing it.

8. Parading has long been and continues to be a contentious issue in NI. It was clear from our review of the policing of parades in NI that the optimal human rights framework for governing parades remains elusive. The absence of a tailored Bill of Rights for NI – as promised in the B/GFA – and specific parading legislation are the main reasons. Unfortunately, therefore, parading continues to be a highly contentious issue in NI, with the parading season regularly being accompanied by violent clashes between communities and the PSNI.
9. Despite reforms and societal changes since the B/GFA, and the relative lack of violence following the turn of the century, the prevalence of paramilitary murals, flags and recruitment practices ensure that many localised cultures of ‘normalisation’ of political violence persist within specific communities. The failure of the UK and local security forces, criminal justice actors and public authorities to confront these tendencies means that many communities and individuals hold an uncomfortable ambivalence towards how conflict (and even pre-conflict) issues have been addressed. Moreover, housing segregation along religious lines continues to exist in parts of NI because of paramilitary intimidation, including sectarian and racist intimidation. Therefore, along with an effective security reform and response, we found that there remains a need for concerted efforts to tackle the socio-economic problems that afflict those areas over which paramilitaries hold a strong influence.

Law- and policy-makers charged with post-conflict reform should seek to address the root causes of actual or perceived inequalities, particularly when these contribute to a conflict situation.

10. We also provide numerous recommendations for post-conflict societies to learn from the peace process in NI – both in terms of how things went well, but also how they could have been improved. In terms of the equality provisions of the B/GFA, we found that lessons learned include the following:
 - Actors involved in the transition to a post-conflict society should prioritise human rights, equality and non-discrimination. This applies regardless of the role actual or perceived inequalities or human rights violations contributed to the conflict.

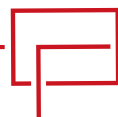


- Law- and policy-makers charged with post-conflict reform should seek to address the root causes of actual or perceived inequalities, particularly when these contribute to a conflict situation.
- Law- and policy-makers should seek to address the gendered consequences of the conflict, for all gender identities. The gendered aspects of new legal and policy frameworks should be accounted for.
- Law- and policy-makers should transition away from security-related measures and towards a normalisation of the legal framework. To the extent that security measures remain in place, these should be operated transparently, and in compliance with the rule of law, human rights and equality laws.
- Law- and policy-makers should respect cultural identities when engaging in post-conflict reform. This should occur regardless of the role that cultural identities played in the conflict. Law- and policy-makers should carefully consider how to address communities' conflicting rights.
- Civil society organisations should continue pressuring law- and policy-makers to mainstream human rights, equality and non-discrimination during peace processes.

Governments should ensure that any mechanism for achieving post-conflict justice is sufficiently independent from the state.

11. We then look at the effectiveness and rights-compliance of the accountability mechanisms put in place post-conflict. In NI, accountability mechanisms were an important outcome of the B/GFA and subsequent agreements. These include the Police Ombudsman, Policing Board, the Parades Commission, Criminal Justice Inspection NI, the NI Human Rights Commission, the Equality Commission NI, the Prisons Ombudsman and the Commission for Victims and Survivors. In reviewing the operation of these mechanisms, lessons learned in NI for other post-conflict societies include the following:

- Law- and policy-makers should create a robust framework for ensuring respect for human rights and equality laws. This may require the introduction of new human rights and equality laws, including to align the state's legislative framework with international human rights treaties.
- Law- and policy-makers should ensure that mechanisms exist to address conflict-related crimes, particularly those which would amount to gross human rights abuses. This may require the creation of new accountability mechanisms for conflict-related offences.



- Governments should ensure transparency about their role in the conflict, ensuring that an independent and impartial tribunal has the powers and resources to hold current and former government members to account for crimes allegedly committed during the conflict.
 - Governments should ensure that any mechanism for achieving post-conflict justice is sufficiently independent from the state.
 - Governments should provide sufficient resources and funding to post-conflict accountability mechanisms.
12. Recent political developments have shown the instability of the peace process in NI. For instance, the withdrawal of the UK from the European Union (EU) (the process known as ‘Brexit’) has had a significant impact on the peace process since the Brexit referendum in 2016. The Protocol on Ireland - Northern Ireland (the NI Protocol), an arrangement addressing the consequences of Brexit for NI, was agreed as part of the UK–EU Withdrawal Agreement that formally took the UK out of the EU on 31 January 2020. Its purpose was to prevent a ‘hard border’ on the island of Ireland, by requiring NI to align with EU law in some areas, and allowing it to maintain frictionless access to the EU. (The Republic of Ireland remains an EU Member State.) However, it also meant that goods entering NI from GB (that is, the rest of the United Kingdom) need to prove they comply with EU law in these areas – creating the need for checks and paperwork.
13. Unionists describe the NI Protocol as enabling the creation of a border in the Irish Sea between NI and GB. This stance led to the inability of political parties in NI to form the NI Assembly following the May 2022 elections. Following subsequent negotiations, the UK and the EU reached an agreement on 27 February 2023 to make changes to the NI Protocol; the agreement is known as the ‘Windsor Framework’. It remains to be seen at the time of writing whether the NI Assembly will be restored as a result of these changes. In the meantime, NI remains without a local government that can make or change laws for the region.

We found that the central lesson from the peace process in NI for civil society in conflict and post-conflict societies is that human rights and equality legislation must be robustly implemented and there should be no regression in protection.

14. Ultimately, notwithstanding the instability created by the consequences of Brexit, we found that the central lesson from the peace process in NI for civil society in conflict and post-conflict societies is that human rights and equality legislation must be robustly implemented and there should be no regression in protection, which should be enforced by adequately resourced accountability mechanisms, including the courts. Whatever the political future of the institutions created under the B/GFA, this central lesson is one that must continually be learned by each generation in NI and elsewhere.



2. Introduction

***'The success of the Good Friday Agreement? Well, it stopped us from killing each other.'*²**

15. The B/GFA brought an official end to decades of conflict in NI and is often cited as a sound example of a successful peace process from which other societies can learn. The cessation of violence, decommissioning of weapons held by paramilitaries and radical reforms to policing have been stated as evidence of the success of B/GFA.³ Delegations of civil society leaders, academic experts, lawyers and police officers from other divided societies, such as Colombia and Kenya, frequently visit NI to draw lessons on how to make a successful transition to peace.⁴

16. However, NI's peace has also been described as a 'fragile' one, and that description has never been so apt as it is in the present time.⁵ Elections in May 2022 led to the nationalist party, Sinn Féin, securing the highest number of seats in the NI Assembly. Local council elections in NI in May 2023 also led to Sinn Féin securing the highest number of seats in local councils.⁶ At the time of writing, the Democratic Unionist Party (DUP) is refusing to nominate ministers to the NI Executive over its opposition to the Protocol on Ireland-Northern Ireland (the Protocol), an arrangement addressing the consequences of Brexit for the region, and what it describes as the creation of a border on the Irish Sea between NI and the rest of the United Kingdom (UK).⁷ Opposition to the Protocol has also been articulated through the withdrawal of support for the Good Friday Agreement by loyalist paramilitaries in March 2021,⁸ violent protests in Protestant/Unionist/Loyalist (PUL) areas in the summer of 2021, an October 2022 letter shared via the Loyalist Communities Council (LCC) in which violent groups issued a warning that Irish government ministers should not visit NI,⁹ and isolated incidents of political intimidation, such as the threat to the Alliance Councillor Michael Long when canvassing for council elections in Belfast in April 2023.¹⁰ This opposition to the Protocol by the DUP continues despite the UK's and EU's announcement on 27 February 2023 of the new 'Windsor Framework' to make changes to the Protocol.¹¹

² Interview with Jonny Byrne, Senior Lecturer in Criminology at Ulster University, 22 March, 2022.

³ See Peter Hain, ['Peacemaking in Northern Ireland: A Model for Conflict Resolution?'](#) (Blickpunkt Großbritannien, August 2008).

⁴ In relation to Colombia, see Gloria Cuartas, Nidia Quintero and David Florez, ['Colombian Peace Delegation to Meet Senior Officials, Politicians in Dublin, Belfast and London'](#) (*Irish Congress of Trade Unions*, 22 April 2013). In relation to Kenya, see Kenyans for Peace with Truth & Justice and Ulster University Transitional Justice Institute, ['The Nairobi Principles on Accountability'](#) (2019).

⁵ Feargal Cochrane, ['Northern Ireland: The Fragile Peace'](#) (New Haven: Yale University Press, 2021).

⁶ For full results, see The Electoral Office for Northern Ireland, ['Elections 2023'](#) (*Electoral Office for Northern Ireland*, 2023).

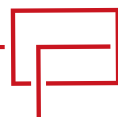
⁷ ['Protocol on Ireland/Northern Ireland'](#) (October 2019).

⁸ Rory Carroll, ['Brexit: loyalist paramilitary groups renounce Good Friday agreement'](#) (*The Guardian*, 4 March 2021).

⁹ Emma Montgomery and Kurtis Reid, ['Councillor attacked while canvassing thanks supporters and vows to continue work'](#) (*Belfast Telegraph*, 16 April 2023).

¹⁰ Kurtis Reid, ['We're not going to be intimidated': Simon Coveney responds to possible threats from loyalist groups'](#) (*Belfast Telegraph*, 2 November 2022).

¹¹ John Curtis et al, ['Northern Ireland Protocol: The Windsor Framework'](#), CBP 9736 (House of Commons Library, 21 March 2023).



The Windsor Framework and the Protocol were therefore prominent issues in the local elections in NI in May 2023.¹²

17. The concept of ‘security’ and the threats to it are highly contested in NI. Communities across the region are questioning the ability and willingness of the UK government to protect their security and interests.¹³ Threats to human rights are perceived as coming from state actors, paramilitary groups and in some cases, the ‘other’ community. In addition, the government introduced three major pieces of legislation in Westminster that many commentators and NGOs, including RSI, assert are in violation of B/GFA.¹⁴ In the aftermath of the twenty-fifth anniversary of the B/GFA, it has never been timelier to document the progress and achievements that were enabled as a result of the human rights protections guaranteed in the peace agreement through giving domestic effect to the European Convention on Human Rights (ECHR),¹⁵ which made human rights protections binding and enforceable throughout the UK, and to investigate how, over two decades on, other divided societies can draw lessons (both positive and negative) from the experience in NI. However, as the twenty-fifth anniversary of B/GFA has now passed and there has been much reflection on the negotiations and outcomes of it by those involved who remain alive, it is clear that there are lessons available for NI politicians and civil society regarding how the agreement and its institutions have operated as the peace process has evolved.

18. In line with the institutional goals of RSI, which commissioned this research, as well as the methodology employed by the researcher, this paper identifies the following goals in the sphere of security-related human rights for civil society wishing to engage in NI to consider:

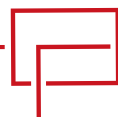
- a. Achieving non-discriminatory, rights-respecting security laws and policies;
- b. Ensuring that governments are accountable for their security-related actions and that the rule of law applies to all they do—including in the name of ‘national security’;
- c. Making human rights central to UN and regional institutions’ approaches to security and counter-terrorism; and

¹² Paul Ainsworth, ‘[Opinion Poll: Council services top Windsor Framework as main reason to vote](#)’ (*The Irish News*, 2 May 2023).

¹³ Steve Smith, ‘The Contested Concept of Security’, in Ken Booth (ed.), *Critical Security Studies and World Politics* (Boulder: Lynne Rienner Publishers, 2005); Ronald Weitzer, ‘[Contested Order: The Struggle over British Security Policy in Northern Ireland](#)’ (April 1987) 19(3) *Comparative Politics* 281-298.

¹⁴ [Bill of Rights Bill](#), Session 2022-23; [Northern Ireland Protocol Bill](#), Session 2022-23; [Northern Ireland Troubles \(Legacy and Reconciliation\) Bill](#), Session 2022-23.

¹⁵ [Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms](#), Rome, 4 November 1950, entered into force 3 September 1953, 213 UNTS 221 (ECHR).



- d. Ensuring that private businesses stand firm against government pressures to violate rights as part of ‘security’ measures, and that enterprises do not take advantage of state security powers in ways that harm rights.

When post-conflict societies renege or fail to build on human rights guarantees, there is a danger that peace processes will unravel.

19. These goals are *desirable* in and of themselves. Functioning democracies ought to provide human rights protections to all and be accountable for the decisions they make and the actions they take. In addition, this paper contends that these goals are *necessary* for securing and maintaining peace and reconciliation in conflict and post-conflict societies. When post-conflict societies renege or fail to build on human rights guarantees, there is a danger that peace processes will unravel.¹⁶
20. The B/GFA covers many aspects of life, including socio-economic rights to education, language and cultural expression. These issues were also fundamental to securing peace. However, like many other states, the UK has struggled to frame national security laws in a way that respects human rights. Yet, it is laws enacted in the name of security that are often the most intrusive and potentially rights-violating. Legislation, policies and practice implemented in the name of security continue to be highly problematic when it comes to their human rights compliance. Furthermore, when challenged by human rights organisations, states often use the excuse of ‘national security’ to fetter transparency and accountability. Yet, human-rights-compliant security laws and policies are necessary in democratic societies, and often the absence of them is a major cause of unrest and disenfranchisement.¹⁷ This study investigates how contingent peace and reconciliation in NI have been on the realisation of the first two goals outlined above. It will examine the role human rights play in counter-terrorism laws in NI, in policing as well as accountability mechanisms in the form of the courts and non-judicial bodies. It will also examine what lessons can be learned from the NI peace process which can be applied to other conflict and post-conflict societies.¹⁸

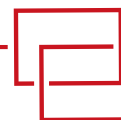
Security is contested

21. The paper is premised on the belief that security goes beyond the traditional concept of ‘the conditions that make the use of force more likely, the ways that the use of force affects individuals, states, and societies, and the specific policies that states adopt in

¹⁶ Ilze Brands Kehris, [‘The role of human rights in peace and mediation processes’](#), speech at the Berghof Foundation, 22 June 2022.

¹⁷ See, for instance, Elise Rainer and Anish Goel, [‘Self-Inflicted Instability: Myanmar and the Interlinkage between Human Rights, Democracy and Global Security’](#) (2020) 16(4) *Democracy and Security* 334-350.

¹⁸ With the recognition that the implementation of any such lessons must take a context-sensitive approach: see Janine Natalya Clark and Michael Ungar (eds.), [Resilience, Adaptive Peacebuilding and Transitional Justice: How Societies Recover after Collective Violence](#) (Cambridge: Cambridge University Press, 2021).



order to prepare for, prevent, or engage in war'.¹⁹ While addressing the use or threat of force by state and non-state actors is key to any peace process, peace and security can be threatened by more subtle forms of intimidation and discrimination. In NI we have seen how one community exercising its right to freedom of assembly and association (Article 11 ECHR) can be seen as threatening the security of another community. Along with counter-terrorism measures and policing, the contentious issue of parading is therefore discussed in this study. In this respect, it is important to note that parading has precedents and parallels in other societies, which makes the example globally significant. For example, there have been far-right/white supremacist parades in the United States in recent years, such as the 2017 'Unite the Right' rally in Charlottesville, during which a member of the rally drove a car into a crowd of counter-protesters, killing one.²⁰ Similarly, the global debate over how to approach discriminatory or hateful speech online demonstrates that other societies also experience situations in which communities' rights appear to come into conflict.²¹

Security goes beyond the traditional concept of 'the conditions that make the use of force more likely, the ways that the use of force affects individuals, states, and societies, and the specific policies that states adopt in order to prepare for, prevent, or engage in war'.

Gender justice

22. This paper will also examine the impact the conflict and the peace settlement have had on the realisation of gender justice in NI. Gender justice is particularly important but usually overlooked in studies of NI as a post-conflict society.²² All interviewees agreed that in the desire to address and then end the political violence in NI, the position of women and ethnic minorities was often overlooked. Indeed, an oversimplification of NI would see its history and present as a tension between nationalist aspirations for NI's reunification with the Republic of Ireland and unionist ones for remaining part of the UK. While much of the violence has been in this arena, its impact has had far-reaching consequences for all. The B/GFA and subsequent political interventions have perhaps shown how this binary approach has left behind many communities in NI. Racially motivated hate crimes in NI continue to be among the highest in the UK.²³ Women still do not have adequate access to abortion services, with the current Secretary of State

¹⁹ Stephen M. Walt, '[The Renaissance of Security Studies](#)' (June 1991) 35(2) *International Studies Quarterly* 211-239.

²⁰ Maev Kennedy, '[Heather Heyer, victim of Charlottesville car attack, was civil rights activist](#)' (*The Guardian*, 14 August 2017).

²¹ For a brief summary, see Andrew Clapham, [Human Rights: A Very Short Introduction](#) (2nd edn, Oxford: Oxford University Press, 2015), pp. 110-121.

²² In April 2022, the Women's Resource and Development Agency highlighted heightened violence against women and girls in Northern Ireland: see Women's Policy Group NI, '[Violence Against Women and Girls in Northern Ireland: NI Women's Policy Group Research Findings](#)' (April 2022).

²³ Grahame Allen and Yago Zayed, '[Hate Crime Statistics](#)', CBP 8357 (House of Commons Library, 2 November 2022), pp. 49-51.



for NI, Chris Heaton-Harris MP, writing to the Department of Health in December 2022 to formally commission abortion services following the failure of elected officials in NI to do so.²⁴ This paper recognises the complex and far-reaching impact of security measures and the intersectionality of our identities.

Racially motivated hate crimes in NI continue to be among the highest in the UK.

3. Methodology

23. This study is informed by existing literature on the Troubles and the peace process in NI by academics, non-governmental organisations and legal experts, as well as legal judgments. There are significant studies comparing and contrasting NI's conflict with other conflict and post-conflict countries and territories, such as Palestine, Sri Lanka, Iraq and Afghanistan.²⁵ This study draws on existing analyses but concentrates on the provisions in NI's peace process that are linked to the concept of security. It does assert that for other societies to draw lessons from the NI experience, peace processes need to go beyond traditional concepts of security. It also applies a gender lens to the analysis.
24. Five semi-structured interviews with individuals with expert knowledge of security issues in NI and internationally were also conducted for this research. Some interviewees have direct experience with the security services. These interviews provided a rich and sometimes seldom heard analysis of the region's history and present. Interviewees were unanimous in stating that a robust framework of human rights protection and accountability was necessary for peace in NI. Those interviewees who consented to be named are identified in the body of this report. A number consented to be interviewed but wished to remain anonymous.

4. Non-discrimination and human rights in security law and policies

25. Central to NI's peace process was the embedding of new equality and human rights protections and mechanisms for redress through judicial and non-judicial avenues. The B/GFA devotes an entire section to 'Rights, Safeguards and Equality of Opportunity'. A commitment to complete the process of giving domestic effect to the ECHR was accompanied by a range of measures that would further embed human rights in everyday life in NI. A number of institutions were created as a result of the B/GFA that

²⁴ Northern Ireland Office and The Rt Hon Chris Heaton-Harris MP, '[Secretary of State for Northern Ireland instructs the Department of Health to commission abortion services](#)' (*Gov.uk*, 2 December 2022).

²⁵ Tirza Kelman, '[The spectrum of war and peace: Lessons from Northern Ireland for the Israeli-Palestinian conflict](#)' (*LSE Blogs*, 5 March 2019); Feargal Cochrane, Bahar Baser and Ashok Swain, '[Home Thoughts from Abroad: Diasporas and Peace-Building in Northern Ireland and Sri Lanka](#)' (2009) 32(8) *Studies in Conflict & Terrorism* 681-704; Peter Neumann, '[Iraq: Lessons from Northern Ireland](#)' (February 2004) 54(2) *History Today*; Niall Glynn, '[Northern Ireland lessons shared in Afghanistan](#)' (*BBC News*, 24 September 2012).



were mandated with monitoring the state's human rights and equality laws and practices in NI, such as the Equality Commission for NI and the NI Human Rights Commission.

26. Additionally, reforms to policing in NI were essential in making the transition from 'the Troubles' and justifying and increasing cross-community trust in policing,²⁶ which can reduce the risk of vigilante justice and cycles of violence and retribution. One year after the B/GFA, the Independent Commission on Policing for Northern Ireland (the Patten Commission) published a report with 175 recommendations on the symbolic and practical changes needed for comprehensive police reform.²⁷ Major recommendations included removing British symbols, renaming the Royal Ulster Constabulary (RUC), implementing a 50:50 recruitment policy for Catholics and Protestants for at least 10 years, and establishing a new policing board and a police ombudsman to hold the police accountable. The Patten Report is discussed further below.

Reforms to policing in NI were essential in making the transition from 'the Troubles' and justifying and increasing cross-community trust in policing.

27. The introduction of the Human Rights Act 1998 firmly cemented the commitment to give victims of human rights abuses direct access to the courts for redress, including for those abuses that the government carried out in the name of protecting security. This commitment was reflected in section 6(2)(c) of the Northern Ireland Act 1998, which stipulated that a provision of an Act of the NI Assembly is not law if it is incompatible with any of the Convention rights. Furthermore, Section 19 (d) of the Human Rights Act requires the minister in charge of a bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the ECHR rights.²⁸ Similarly, on devolved issues, ministers in NI are required to make a statement of compatibility to the NI Assembly. This requirement for all legislation to be compatible with the rights in the ECHR extends to national security laws, and the courts are required to consider the necessity and proportionality of any government legislation intended to address violence or other threats to national security.²⁹

Counter-terrorism and security measures

²⁶ Kimberly Cowell-Meyers and Carolyn Gallaher, '[Police reforms helped bring peace to Northern Ireland](#)' (*The Washington Post*, 18 June 2020); Marina Caparini and Juneseo Hwang, '[Police Reform in Northern Ireland: Achievements and Future Challenges](#)' (*Stockholm International Peace Research Institute*, 28 October 2019); Laura A. Weinstein and Donald Beaudette, '[Northern Ireland's police transformation may hold lessons for the US](#)' (*The Conversation*, 26 June 2020).

²⁷ Chris Patten, '[A New Beginning: Policing in Northern Ireland. The Report of the Independent Commission for Policing in Northern Ireland](#)' (September 1999).

²⁸ Although ministers can still propose legislation which they believe may not be compatible with the Convention.

²⁹ Notably, one of the early declarations of incompatibility made by the UK courts – statements which tell the UK Parliament that it is not possible to interpret a piece of legislation in a way that complies with the ECHR – was in relation to the indefinite detention without trial of foreign terror suspects permitted under the [Anti-Terrorism, Crime and Security Act 2001](#): see [A and others v. Secretary of State for the Home Department](#) [2004] UKHL 56.



Counter-terrorism and security measures

28. The disproportionate impact of security laws on the Catholic/nationalist/republican (CNR) community in NI during the Troubles has been well documented. The practice of internment without trial introduced under the Special Powers Act in 1971 was used exclusively on Catholics for the first two years. It has since been widely accepted that the practice was not only discriminatory but also wholly counterproductive in addressing political violence.³⁰ In short, it led to the detention of innocent people and alienated community members whose assistance, intelligence and engagement were required to address the violence.

The practice of internment without trial was not only discriminatory but also wholly counterproductive in addressing political violence. It led to the detention of innocent people and alienated community members whose assistance, intelligence and engagement were required to address the violence.

29. Indeed, the term ‘suspect community’, now widely used in relation to the Muslim community in the UK, was first coined by the academic Paddy Hillyard in his examination of the Prevention of Terrorism Act 1973 and its impact on Catholics in the UK.³¹ Catholics were to become the main subject and focus of the government’s security agenda for almost 25 years in NI and the rest of the UK, falling under suspicion simply by virtue of their religious identity. As Jane Winter, the then-director of what is now RSI, wrote in 1995, ‘human rights violations, the imposition of emergency laws, and institutionalised discrimination against Catholics have fuelled and prolonged the conflict for over 25 years’.³² A counter-terrorist strategy that was discriminatory and disproportionately intrusive did not end the political violence in NI, and in some cases fuelled it further. Human rights organisations throughout the Troubles, and since, have highlighted the need to deal with political violence through the normal criminal justice system as opposed to emergency provisions.³³ Where emergency provisions are necessary, they (like all other policies and legislation) must meet the standards set by human rights and equality law. Special or emergency measures during the Troubles needed to be accompanied by more robust oversight and scrutiny while avoiding discrimination.

³⁰ Tony Craig and Martin McCleery, [‘Political bargaining chips: republican internees in Northern Ireland 1972-1975’](#) (2020) 31(3) *Small Wars & Insurgencies* 639-660.

³¹ Paddy Hillyard, [‘Suspect Community’](#) (London: Pluto Press, 1993).

³² Jane Winter, [‘Human Rights and the Peace Process in Northern Ireland’](#) (1995) 1(1) *International Journal of Discrimination and the Law* 63-76.

³³ See, for instance, Northern Ireland Human Rights Commission, [‘Justice and Security \(Northern Ireland\) Bill: Briefing by the Northern Ireland Human Rights Commission’](#) (2007), para. 3; Committee on the Administration of Justice, [‘War on Terror: Lessons from Northern Ireland’](#) (Belfast: CAJ, 2008).



A counter-terrorist strategy that was discriminatory and disproportionately intrusive did not end the political violence in NI, and in some cases fuelled it further.

30. The B/GFA recognised the need for security measures to return to normal practices and the end of emergency powers for peace to be a reality. The participants to the Agreement noted ‘that the development of a peaceful environment on the basis of this agreement can and should mean a normalisation of security arrangements and practices’.³⁴ There was, therefore, recognition that special measures and emergency powers needed to be wound down for the peace process to be a successful one. The B/GFA pledged the removal of security installations and emergency powers and the reduction of the presence of the British Armed Forces.
31. However, progress in this area has been slow and has sometimes even taken a step backward. Counter-terrorism is an excepted matter in the devolution agreement and therefore NI continues to be subject to all the counter-terrorism legislation as the rest of the UK.³⁵ The applicability of these measures to NI is problematic (as it is elsewhere in the UK) in terms of the level of intrusion and interference with people’s human rights that they permit. RSI has provided a robust analysis of many of these measures elsewhere, which will not be repeated here. NI has been subject to additional measures since 2007, when the UK Government introduced the Justice and Security (Northern Ireland) Act 2007 (JSA). The purported rationale for the JSA was to facilitate security normalisation in NI.³⁶ However, section 21 of the JSA permits stop-and-question and stop-and-search, and in this respect the legislation has been expansive and controversial. Section 24 provides police officers with the power to stop and search any person for any wireless apparatus or munitions; specifically, the searching officer may have a basis to search a person by virtue of a broad ‘authorisation’ under Section 24 and Schedule 3 to the JSA, instead of any suspicion that is specific to the individual being searched. While multiple levels of approval are necessary, authorisations apply to a whole geographic area, which in practice has covered the entire territory of NI.
32. Such powers have clear implications for the right to liberty and the right to respect for private and family life (Articles 5 and 8 ECHR), as has been established in the case of *Gillan and Quinton v UK* with respect to the stop and search powers in the Terrorism Act 2000.³⁷ They also have implications for the prohibition on discrimination, not only in theory but also in practice. For instance, freedom of information requests have revealed that twice as many Catholics as Protestants were subjected to the stop and search powers under the JSA over a 12-month period in 2020-2021.³⁸ Arrest rates, however, were less than one percent over that same period, drawing into serious question the effectiveness of the provision itself and the way in which the PSNI

³⁴ [Belfast/Good Friday Agreement](#), 10 April 1998, ‘Security’, para. 1.

³⁵ For a summary, see Daniel Holder and Christina Verdirame, ‘[The national security doctrine in Northern Ireland legislation](#)’ (2016) 67(1) Northern Ireland Legal Quarterly 93-97.

³⁶ [Justice and Security \(Northern Ireland\) Act 2007](#), Explanatory Notes, para. 3.

³⁷ [Gillan and Quinton v. the United Kingdom](#), Application No. 4158/05, Judgment, 12 January 2020.

³⁸ [Rory Winters, ‘PSNI conducted twice as many stop and searches on Catholics as Protestants’ \(The Detail, 21 April 2022\).](#)



exercises it. There are also serious concerns about the use of these powers on children.³⁹ Research carried out by John Topping and Dirk Schubotz of Queen's University Belfast (QUB) concluded that stop-and search powers are 'the most prevalent form of adversarial contact between the public and the PSNI.'⁴⁰

33. The High Court and the Court of Appeal (which included the Lord Chief Justice) have found that the use of the JSA's suspicionless stop and search power does not violate the ECHR – even though UK courts and the European Court of Human Rights had previously found that similar stop-and-search provisions did not meet Convention standards. However, the Court of Appeal did direct the PSNI to collate and publish information on the community background of those the police subject to these powers.⁴¹ However, patterns and trends in stop-and-search remain extremely difficult to track, with the PSNI still not collecting the required data. The problem persists despite those judgments as well as repeated recommendations from the Human Rights Adviser of the Policing Board and the Independent Reviewer of the Justice and Security Act advising the PSNI to collect such data from at least 2008.⁴²

It can be extremely difficult to mitigate against the worst impact of security laws when those laws fall short of human rights obligations.

34. There is no doubt that the special measures within the JSA have been accompanied by enhanced scrutiny in the form of an Independent Reviewer of the Justice and Security (NI) Act. The PSNI has repeatedly referred to the reviewer's existence to assure the public and oversight mechanisms that it will use the powers appropriately.⁴³ The Policing Board has also taken a particular interest in the JSA and reports on its use in its annual human rights report.⁴⁴ However, the experience of those subjected to the powers under the JSA demonstrates that, despite concerted efforts, it can be extremely difficult to mitigate against the worst impact of security laws when those laws fall short of human rights obligations. Human rights organisations and oversight bodies in NI have rightly tried to reduce the risk of discriminatory and arbitrary tactics by the PSNI, by seeking the collation and publication of data around community background. The PSNI's failure to publish the data, however, has been possible because they

³⁹ See [Re Ailise Ni Mhurchu's Application for Judicial Review](#) [2021] NICA 17.

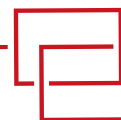
⁴⁰ John Topping and Dick Schubotz, '[The 'usual suspects'? Young people's experiences of police stop and search powers in Northern Ireland](#)' (May 2018) 120 Ark Research Update.

⁴¹ [Re an application by Steven Ramsey for Judicial Review \(No. 2\)](#) [2020] NICA 14.

⁴² The Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007 collates similar information as part of its mandate: see Marie Breen-Smyth, '[Report of the Independent Reviewer of the Justice and Security \(Northern Ireland\) Act 2007, Fourteenth Report, 1 August 2020-31 July 2021](#)' (June 2022), paras. 6.95-6.106. See also John Topping and Ben Bradford, '[Now you see it, now you don't: On the \(in\)visibility of police stop and search in Northern Ireland](#)' (2018) 20(1) *Criminology and Criminal Justice* 93-110.

⁴³ As discussed in Committee on the Administration of Justice, '[Still part of life here? A report on the use and misuse of stop and search/question powers in Northern Ireland](#)' (November 2012).

⁴⁴ See, for instance, Northern Ireland Policing Board, '[PSNI use of stop and search powers](#)' (May 2019).



maintain they do not have the mandate to do so, which is an argument that does not bear scrutiny in light of the *Ramsey* court judgment ordering such disclosure.⁴⁵

35. Dissatisfaction with the use of powers under the JSA extends to both CNR and PUL communities in NI. PUL communities report the frequent use of JSA powers in their areas and alienation from the PSNI as a result. In CNR areas in NI, there are communities that assert they are subject to disproportionate and unwarranted levels of surveillance and stop and search.⁴⁶ These claims indicate a peace process that has not produced positive outcomes for all and, in particular, those who continue to feel their security is at risk from those forces empowered to protect it. These perceptions of disproportionate and unwarranted surveillance and stop-and-search are not conducive to peace and security because they undermine relations with the police and endanger productive community engagement. This issue is of global relevance. For instance, in the United States, police 'stop-and-frisk' powers have been controversial for very similar reasons, with clear links to discrimination and long-term harms.⁴⁷
36. A highly effective step toward addressing these perceptions would be for the PSNI to display transparency in its use of the powers by collating and publishing the required data on community background, including for arrest rates. This principle is applicable to all conflict and post-conflict societies. Provided that police operations are based on fact, and used in line with human rights and other laws, such figures would demonstrate the efficacy of the legislation and the way it is being operationalised and counter any concerns that may exist, such as allegations of collusion between the state security services and paramilitaries, considered by the Operation Achille and Operation Kenova investigations.⁴⁸

Security and gender justice

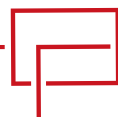
37. Counter-terrorism measures have a gender dimension which governments, courts and civil society often overlook in NI and elsewhere. These gendered collateral impacts of counter-terrorism measures have recently been discussed in depth by Fionnuala Ní

⁴⁵ [Re an application by Steven Ramsey for Judicial Review \(No. 2\)](#) [2020] NICA 14. See also [Gillan and Quinton v. the United Kingdom](#), Application No. 4158/05, Judgment, 12 January 2020.

⁴⁶ Marie Breen-Smyth, '[Report of the Independent Reviewer of the Justice and Security \(Northern Ireland\) Act 2007, Fourteenth Report, 1 August 2020-31 July 2021](#)' (June 2022), p. 79.

⁴⁷ Corey Kilgannon, '[N.Y.P.D. Anti-Crime Units Still Stopping People Illegally, Report Shows](#)' (*The New York Times*, 5 June 2023); NYCLU, '[A closer look at stop-and-frisk in NYC](#)' (NYCLU, 2022).

⁴⁸ Operation Achille identified significant investigative and intelligence failures and 'collusive behaviours' by the RUC in relation to a series of murders and attempted murders by the UDA/UFF in south Belfast in the 1990s: see Police Ombudsman for Northern Ireland, '[Statutory report: Investigation into police handling of loyalist paramilitary murders and attempted murders in South Belfast in the period 1990-1998](#)' (8 February 2022). The former chief constable of the Bedfordshire Police, Jon Boutcher, is leading an independent team, Operation Kenova, to conduct the investigation into a range of activities surrounding an alleged individual codenamed 'Stakeknife'. Many people in NI are concerned about the involvement of this alleged State agent in kidnap, torture and murder by the Provisional IRA during 'the Troubles' and believe those actions were preventable. For more information, see Operation Kenova's website: <https://www.opkenova.co.uk/>.



Aoláin, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.⁴⁹ In NI, it is still men that tend to be the subject of disproportionate targeting by police and armed forces, which could constitute gender or intersectional discrimination against men.⁵⁰ In any event, collusion, the freezing of assets and the use of surveillance on men clearly also have implications for female family members and associates. Geraldine Finucane’s quest for an independent inquiry into the 1989 murder of her husband Pat Finucane, a Belfast solicitor, is a poignant example.⁵¹

38. Security measures and political violence undoubtedly impact on the civil, political and socio-economic rights of women in all societies even when they are not used directly on women. When assessing threats to security, whether from state actors or non-state actors, the problems experienced by women can at best be overlooked and at worst seen as of secondary importance to stopping the violence. As the prominent former Women’s Coalition member Monica McWilliams explained in an interview:

*‘It’s something that often happens in other conflict societies too where I mean, when I’m in Colombia, the Chief of Police there told me that he wasn’t interested in domestic violence, he had a lot of other violence to sort out first. And, and so it’s almost as if you’re always told wait and watch until we get this without an understanding that this is at the core of your violence. And if you don’t sort this, you will have that violence on the streets to sort out. So yes, that’s, that is a concern that is predominantly under and it’s probably true, and I’m on the [Independent Reporting Commission] and I see it, that quite a lot of resources are still given to things like regulating bonfires and where the men behave badly. And so some believe that the louder they speak, and shout and rant and the more they behave badly, the more resources are given’.*⁵²

Security measures and political violence undoubtedly impact on the civil, political and socio-economic rights of women in all societies even when they are not used directly on women.

39. Indeed, threats to women’s security such as domestic and sexual violence are often not seen as ‘security’ issues at all and, ironically, women protesting against sexual or gender-based violence are sometimes treated as security threats. In NI, it might be argued, women’s security is liable to be sacrificed for the sake of preserving the

⁴⁹ Martin Scheinin, [‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism’](#), A/64/211, 3 August 2009.

⁵⁰ On the gender dimension of the PSNI, see Amy Cochrane, [‘Men dominate at top of police, politics and the health service’](#) (*Belfast Telegraph*, 20 January 2022).

⁵¹ Magill, [‘Interview with Geraldine Finucane: Breaking the glass ceiling’](#) (*Magill*, 10 January 2007).

⁵² Interview with Monica McWilliams, co-founder of the Northern Ireland Women’s Coalition and former Member of the Legislative Assembly for Belfast South, 15 April 2022 (via Zoom).

traditional concept of 'national security'. As one expert in human rights explained in an interview:

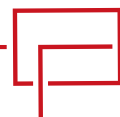
'[T]he police have problems in you know, if a powerful person within that gang is involved in criminality other people often are too frightened to collaborate with the police to expose those criminal activities. And so there's almost like no-go areas. And that's also true, obviously in relation to dissident Republican areas as well. So my anxiety is that vulnerable people within those communities that ... there that could be women subjected to domestic violence, but of course, they could also be children or other people ... [They] really don't have the same access to PSNI as in the middle class areas where you know, paramilitaries don't exist and that's, you know, that's the kind of discriminatory policing, not necessarily because it's the police [who] are intentionally avoiding those areas, but just because of the nature of the violence, as you say, that exists within some communities, which, you know, is very problematic. We have MI5, the Security Service, who are working, as far as I can tell, in a very collaborative way with PSNI in relation to collecting up information, intelligence and helping them to arrest people and prosecute them and use the criminal justice system, but they particularly, you know, MI5 is interested in national security threats and that tends to mean I'm exaggerating here, but it tends to mean threats to the state, which is then reinterpreted as threats to individuals, agents of the state, police officers, prison officers, etc. And so that kind of level of violence is of great interest to the security service, but threats in a loyalist area to other members of the public isn't a priority for MI5. Now, that's not because they are biased. It's just because that's the structure of the law. You know, MI5's role across the UK ... it kind of underlines the point about you know, some crimes are accepted and acceptable and some less so'.⁵³

Threats to women's security such as domestic and sexual violence are often not seen as 'security' issues at all and, ironically, women protesting against sexual or gender-based violence are sometimes treated as security threats.

40. There may be an issue in NI, as in other communities, with problems of police violence making victims of sexual or gender-based violence reluctant to call law enforcement for help.⁵⁴ Furthermore, programmes that have been established to address paramilitary violence are overwhelmingly aimed at countering the 'radicalisation' and grooming of young men. Such grooming may involve threats to life if they do not leave

⁵³ Interview 001 (name redacted), human rights and policing expert, 7 April 2022 (via Zoom).

⁵⁴ Women's Resource and Development Agency, ['Violence Against Women and Girls in Northern Ireland: NI Women's Policy Group Research Findings'](#) (April 2022), pp. 42, 50-52.



areas or comply with requests; drug debt and involvement in distribution and supply; being coerced into intimidating or harming others; violent protest and civil unrest; and recruitment into or being 'claimed' by paramilitary or criminal gangs.⁵⁵ Little attention is paid to the impact of armed paramilitaries on women's autonomy and movement. Examples include predatory lending practices and surveillance by other community members while their male partners are in prison. Recent research states: 'Reflective of the relative invisibility of the impacts of violence on women and girls during the Troubles/Conflict, little is known today about how young women experience violence related to Conflict legacy. Research by McAlister et al. (2021) confirms this, identifying the processes by which young women's experiences of paramilitary-style violence are 'silently silenced'.⁵⁶ This phenomenon has resonances worldwide, as UN Women reports in many conflict-affected countries, such as the Democratic Republic of the Congo.⁵⁷

Little attention is paid to the impact of armed paramilitaries on women's autonomy and movement.

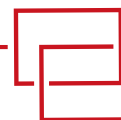
41. As criminologist Jonny Byrne commented in an interview with us in relation to NI, '*So they [men] are still the key protagonists. Among activists in prison, the overwhelming majority are male as well. So the landscape is dominated by males in terms of the peace process, the political process and then the active protagonists in the violence that continued after 1998.*'⁵⁸ Even organisations with charitable status that work with women in areas of paramilitary activity report difficulties in engaging in outreach work that seeks to empower women with the skills and knowledge to access their civil, political and socio-economic rights. Male gatekeepers can prevent or attempt to influence the nature of such work and even when those barriers are overcome, official ones remain. For example, NI organisations working in these areas may be marked as 'high' risk by funders and subject to greater scrutiny and oversight by funding organisations. In turn, funding organisations themselves may be wary of interventions and investigations from the Charities Commission when they choose to support such work. In any peace process there is a concerted need to address that gendered collateral impact of counter-terrorism measures. There were women prominently involved in both violent and non-violent activism during the peak(s) of the Troubles. Women, in the form of the Women's Coalition, were also fundamental to the success of the peace process. But post-1998 little was invested in securing or acknowledging women's voice in the political sphere, with perhaps the notable exception of the Report

⁵⁵ Maurice Fitzmaurice, '[Children's Commissioner says young people "not being properly protected" from paramilitaries](#)' (*Belfast Live*, 12 August 2021).

⁵⁶ Siobhan McAlister et al, '[It didn't end in 1998': Examining the Impacts of Conflict Legacy Across Generations](#)' (Commission for Victims and Survivors and Queen's University Belfast Centre for Children's Rights, October 2021).

⁵⁷ UN Women, '[Women, Peace and Security in Action: 2019-2020](#)' (2020).

⁵⁸ Interview with Jonny Byrne, Senior Lecturer in Criminology at Ulster University, 22 March 2022 (via Zoom).



of the Independent Panel of Inquiry into the Circumstances of the H-Block and Armagh Prison Protests 1976-1981.⁵⁹

42. Monica McWilliams remarked in an interview that more needed to be done in the B/GFA and subsequently to understand the impact of the conflict on women:

'[A]nd women kept their heads down, kept out of politics, kept out of decision making, not that they were ever invited. They had to go and claim their spaces like the Women's Coalition did. There was very little acknowledgement that they could offer anything different. Even though we know that what happens to women is different from what happens to men and, and very little acknowledgement about inclusion. There was inclusion of Catholics or Republicans and Nationalists, but there wasn't in terms of women. And so there was a level of misogyny here that had to be called out. Now it's a system thing, it is no doubt a systems issue. It's not just an individual person trolling... There was an entitlement, there was a permission and it wasn't seen as unacceptable. I think it has changed, in that I see a lot more women coming forward now to be elected in my area. There's lots of women on lampposts standing for election and their photographs, which is a good thing because it also shows they're acting as role models. But for years, that kept women out of the public space and the public square. And those of us who took up those jobs, you know, got absolutely scalded... As I say it wasn't just about keeping Catholic women out it was about keeping all woman out you know, that notion if you came from a certain community, you couldn't be impartial. And just so that had to change and I am totally in favour of affirmative action. If we will not do it willingly, then you need to impose it'.⁶⁰

Some governments have used the human rights of women and lesbian, gay, bisexual, transgender, queer and intersex individuals as negotiables to appease violent groups in ways that have furthered unequal gender relations and subjected such persons to increased violence.

43. There was, of course, no commitment to affirmative action to ensure women's place in public and political life in the B/GFA. The consequence of this inaction is very much

⁵⁹ Phil Scranton (ed.), *'I am Sir, You are a Number': Report of the Independent Panel of Inquiry into the circumstances of the H-Block and Armagh Prison Protests 1976-1981* (Belfast: Coiste na nIarchimí, 2020).

⁶⁰ Interview with Monica McWilliams, co-founder of the Northern Ireland Women's Coalition and former Member of the Legislative Assembly for Belfast South. 15 April 2022 (via Zoom). Online abuse of women and women politicians in particular has exacerbated the problem: see Rory Carroll, *'Cruel and malicious': sexist attacks dampen joy for Stormont's new female members'* (*The Guardian*, 15 May 2022).



felt today, leading to what the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism refers to as a bartering of rights.⁶¹ This means that, contrary to international human rights obligations aimed at ensuring equality, some governments have used the human rights of women and lesbian, gay, bisexual, transgender, queer and intersex individuals as negotiables to appease violent groups in ways that have furthered unequal gender relations and subjected such persons to increased violence. Indeed, as explained above, at the time of writing women in NI still do not have full access to abortion services, largely because of the opposition to women's autonomy by Unionist parties. This situation is grossly out of step with the rest of the UK and in violation of women's rights to private and family life and healthcare. This may say something bigger about how dominant parties fight to preserve existing power structures, through both security laws/measures and restrictions on women. In other words, 'national security' laws may be one way of reaching the conscious or unconscious goals of patriarchal actors and institutions.

Women in NI still do not have full access to abortion services. This may say something bigger about how dominant parties fight to preserve existing power structures, through both security laws/measures and restrictions on women.

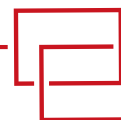
44. Women's contribution to the negotiations was essential to securing the B/GFA, but NI also shows the very negative impacts of failing to secure that voice on an ongoing basis.

Parading and threats to community safety

45. Threats to security in NI also go beyond those from paramilitary organisations and the UK's security forces. Although an important part of NI culture, parading has been a highly contested and controversial practice in the region.⁶²
46. Although the majority of parades are held by PUL communities, CNR communities and non-political groups, such as the Irish National Foresters, also parade. As well as accompanying the parading organisations on their parades, many marching bands also hold their own parades, often as a fundraising activity. The Orange Order institution (part of the PUL community) holds hundreds of parades throughout NI every year, with the largest of these usually being held on the twelfth of July ('the Twelfth'), in commemoration of the Battle of the Boyne of 1690. Individual Orange Order lodges also parade at various times of the year, particularly leading up to the Twelfth.

⁶¹ Martin Scheinin, '[Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism](#)', A/64/211, 3 August 2009, pp. 14-15.

⁶² For an overview, see Neil Jarman, [Material Conflicts: Parades and Visual Displays in Northern Ireland](#) (London: Routledge, 1997).



47. In addition to the Orange Order, the Apprentice Boys of Derry, another PUL organisation, parades to commemorate the siege of Derry/Londonderry, which occurred in the seventeenth century. The largest celebration is held in Derry/Londonderry on the Saturday closest to 12 August each year, which is in commemoration of the lifting of the siege. Members of the organisation also parade on the Saturday nearest 18 December, in commemoration of the original apprentice boys shutting the gates of the town against King James II's troops, and at Easter. Most Apprentice Boys' parades are held in the city of Derry/Londonderry. The main parade of another PUL organisation, the Royal Black Institution, is held on the last Saturday of August, also in commemoration of the end of the siege of Derry/Londonderry. Royal Black Institution parades are also held in Belfast in the two weeks beforehand.
48. Parades are less common among CNR communities. For example, compared to most PUL organisations, the Ancient Order of Hibernians, a CNR organisation, parades relatively infrequently. Their main parades are held on Saint Patrick's Day and at Easter. The Irish National Foresters are a nationalist fraternal organisation; although they are open to Irish people of any religion, the majority of their members are from the CNR community. Their main parading date is the Sunday closest to 1 August. NI's biggest CNR parade takes place in August, initially having begun as a protest against internment without trial before evolving into a festival that celebrates Gaelic and republican culture. CNR parades are also held in January to commemorate Bloody Sunday, at Easter to mark the 1916 Easter Rising and on the anniversary of the 1981 Hunger Strike.⁶³
49. Due to the conflicts inherent in NI parades, the Parades Commission, an independent and quasi-judicial body, was established in 1998 to place restrictions on any parade it deems contentious or offensive.⁶⁴ Although not all parading groups recognise the Commission's authority, its decisions are legally binding.⁶⁵
50. As the vast majority of parades in NI are organised by PUL groups, some people in NI view attempts to restrict parades as an attack on PUL culture. The rights to peaceful assembly and association are of course fundamental protections in the Human Rights Act 1998 (Article 11 ECHR) and the International Covenant on Civil and Political Rights (Articles 21 and 22 ICCPR).⁶⁶ Nonetheless, CNR communities articulate a threat to their security when loyalist parades and military-style bands march through or close to their areas of residence, while PUL communities express concerns about potential threats to their culture and traditions when any restrictions around parading are imposed.⁶⁷ Two years prior to the peace agreement, a three-day stand-off between loyalists and

⁶³ For a list of the main parading events, see Fionnuala McKenna, '[Parades and Marches – Chronology 1: Key Dates in the Parading Calendar](#)' (CAIN, 4 June 2023).

⁶⁴ [Public Processions \(Northern Ireland\) Act 1998](#), s1.

⁶⁵ See, for instance, Sarah Scott, '[Orange Order Ardoyne feeder parade passes peacefully](#)' (*Belfast Live*, 13 July 2015); Rebecca Black, '[Fears mounting of violent clashes at Belfast republican parade](#)' (*Belfast Telegraph*, 6 August 2015).

⁶⁶ In this context, government actors have sought to justify any interferences with the Article 11 ECHR right by referring to the 'margin of appreciation' doctrine; see the evidence by the Northern Ireland Human Rights Committee to the Select Committee on Northern Ireland Affairs at: Select Committee on Northern Ireland Affairs, '[Minutes of Evidence](#)', Session 2000-01, Appendix 15.

⁶⁷ For instance, see Anonymous, '[Petition to Scrap the Parades Commission](#)' (*Parliament.uk*, 31 August 2013).



the RUC took place at the parish church in the town of Drumcree. The stand-off turned to violence, culminating in a Catholic taxi driver being shot dead by the Ulster Volunteer Force (UVF), a loyalist paramilitary group. The RUC subsequently reversed its previous decision and allowed the march to continue.⁶⁸ State papers have revealed that IRA recruitment increased as a result of the Catholic community feeling betrayed by the RUC's decision.⁶⁹ This seminal moment in NI's history led to the Social Democratic and Labour Party (SDLP) resigning its 21 seats in the NI Forum and is acknowledged as a prelude to all-party talks that led to the B/GFA.

51. The Parades Commission was already established at the time of the B/GFA, and so the agreement is largely silent on the issue of parades. But, as the Parades Commission was not able to gain support and trust in its decisions amongst PUL communities, institutional reforms outlined in the Hillsborough Agreement therefore 'committed to a new and improved framework fashioned by all stakeholders and maximising cross community support'.⁷⁰ The First Minister and Deputy First Minister were directed to appoint a working group to make recommendations on a new framework for adjudicating on parades. The new framework was to be a human rights one, with the Hillsborough Agreement explicitly stating that it should reflect the principles of: local people providing local solutions; respect for the rights of those who parade; and respect for the rights of those who live in areas through which they seek to parade, including the right for everyone to be free from sectarian harassment; recognising that at times there are competing rights; transparency, openness and fairness; and independent decision-making.⁷¹
52. However, when the working group concluded its deliberations, its report was never published. Instead, the government consulted on draft legislation which would have encapsulated a human rights-approach to parading, while also replacing the Parades Commission with a new body. The legislation was never introduced, as the DUP withdrew its support for the bill following the vote of the Grand Orange Lodge of Ireland to oppose it.⁷² The Parades Commission continues to operate as per its original mandate and still struggles to gain legitimacy from PUL communities. The Parades Commission therefore continues to work to the parameters of the Public Processions Act 1998, a piece of legislation which could be better aligned with the ECHR in balancing competing rights and making reasonable and proportionate decisions that are necessary in a democratic society. The optimal human rights framework remains elusive, in the absence of a Northern Ireland Bill of Rights – as committed to in the B/GFA – and specific parading legislation which would draw upon the subsequent passage of the Human Rights Act 1998. Therefore, parading continues to be a highly

⁶⁸ For an overview, see Kathy Wilford, '[Ten chapters of the Northern Ireland Troubles – Chapter Nine: The Beginning of the End](#)' (*BBC Rewind*, 2023).

⁶⁹ Éamon Phoenix, 'State papers: Drumcree crisis of 1996 highlighted' (*BBC News*, 30 December 2019).

⁷⁰ [Agreement at Hillsborough Castle](#), 5 February 2010, Section 2, para. 1.

⁷¹ *Ibid.* at Section 2.

⁷² Tom Griffin, '[Has the Orange Order killed the Parades Bill?](#)' (*Open Democracy*, 16 July 2010); BBC News, '[Orange Order to hold DUP talks on draft parading bill](#)' (*BBC News*, 8 July 2010).



contentious issue, with parading season regularly being accompanied by violent clashes with the PSNI in PUL areas.

Paramilitarism

53. The continuation of paramilitarism, and the response of the relevant authorities to it, is a pertinent issue for security in NI as it is in many post-conflict societies.⁷³ As reported by the Independent Reviewer of the JSA:

'[B]oth republican and loyalist paramilitaries continue to carry out violent attacks against their own communities. Paramilitaries seek to control communities through the use of extreme violence up to and including murder and by intimidation. The activities of paramilitaries range from minor to serious criminality, drug dealing, extortion, fuel laundering and murder'.⁷⁴

54. For the majority, the activities of paramilitary groups constitute a clear and obvious threat to their physical security. But paradoxically, to others, paramilitary groups offer economic and social rewards that they believe are out of reach through conventional and legal means.

55. The situation of young people throughout NI, and particularly in economically disadvantaged communities, at this present time highlights the sometimes contradictory nature of security in the region:

'[W]hile a lot of young people perceive the paramilitary groups as a real threat, there is also the attraction of joining a paramilitary group as there are benefits of becoming a member such as solidarity, status and financial benefits... Young people are seen in terms of their potential to augment the ranks of one side or the other. Young people themselves report feeling "safer" if they belong to one group or another'.⁷⁵

Young people receive competing and contradictory messages from state authorities about the consequences of involvement in paramilitary violence.

56. One can see how young people themselves receive competing and contradictory messages from state authorities about the consequences of involvement in paramilitary violence. The case of Joel Keys, a 19-year-old member of the Loyalist Communities

⁷³ See, for instance, Philipp Wesche, ['The Paramilitary Threat in Post-Conflict Colombia'](#) (NACLA, 24 May 2018).

⁷⁴ Marie Breen-Smyth, ['Report of the Independent Reviewer of the Justice and Security \(Northern Ireland\) Act 2007, Fourteenth Report, 1 August 2020-31 July 2021'](#) (June 2022), para. 4.9.

⁷⁵ Marie Smyth and Patricia Campbell, ['Young People and Armed Violence in Northern Ireland'](#) (Institute for Conflict Research, 2005), p. 4, as discussed in Jonny Byrne et al, ['Political Violence and Young People: Exploring levels of risk, motivations and targeted representative work'](#) (Co-operation Ireland, 2016), p. 4.



Council invited to give evidence to a Parliamentary Committee, provides a good example. First, the acceptance of the LCC as a body with which the government could engage is itself a paradox in that although the LCC is not an illegal organisation, paramilitary groups such as the UVF and UDA are represented on it. Many politicians objected to the LCC being invited to give evidence on that basis. Second, Keys felt empowered by his association with the LCC to such a level that he felt able to clearly state in front of the Committee that violence could not be taken off the table.⁷⁶ It is impossible to envisage a young Muslim in the UK making such statements even in a school debate without being referred to the authorities for incitement to terrorism or, at the very least, referral to the Prevent counter-extremism programme. Yet in NI, this episode went by with no consequences.

A highly problematic relationship with paramilitary organisations is very much part of NI's present.

57. This highly problematic relationship with paramilitary organisations is very much part of NI's present. As Duncan Morrow and others explain, *'In many parts of NI, political violence has become part of the "historic narrative" of community identity and, by extension, of belonging and membership in a community'*. They go on to explain further:

'[D]espite ceasefires, many young people continue to grow up in geographical and political communities filled with public reminders of the political and ethical necessity of armed struggle and consistent visual, narrative and ritual messages about enemy-others. While public institutions do not formally endorse these displays, they seldom take action to remove or confront these manifestations. Instead, they are generally treated as part of the physical and cultural fabric of defined neighbourhoods, part of "the normal life" of communities. Within these localised cultures of "normalisation" of political violence, it is sometimes difficult to pinpoint when and how "tolerance" for organised activity mutates into informal "permission" for violent action or even "incitement"'.⁷⁷

58. Many different actors have attempted to address paramilitary activity in a variety of ways. There are, for example, a number of restorative justice programmes aimed at ex-paramilitary members led by non-governmental organisations.⁷⁸ At a state level, the Department of Justice launched the first Adult Restorative Justice Programme for NI in March 2022.⁷⁹ The Independent Reporting Commission was established in 2014 to 'provide a comprehensive analysis of overall efforts to tackle paramilitarism in Northern Ireland; to report on the specific measures currently underway under the Executive

⁷⁶ Julian O'Neill, ['Brexit: Violence 'a last resort', loyalists tell MPs'](#) (BBC News, 19 May 2021).

⁷⁷ Jonny Byrne et al, ['Political Violence and Young People: Exploring levels of risk, motivations and targeted representative work'](#) (Co-operation Ireland, 2016), p. 8.

⁷⁸ See, for instance, Marie Smyth, Jennifer Hamilton and Kirsten Thomson, ['Creggan Community Restorative Justice: An Evaluation and Suggested Way Forward'](#) (Institute for Conflict Research, 2002).

⁷⁹ Department of Justice, ['Department of Justice publishes new draft Protocol for Restorative Justice'](#) (Department of Justice, 27 February 2023).



Action Plan and the Tackling Paramilitary Activity, Criminality and Organised Crime Programme; and, finally, to make recommendations on further actions needed so that the overall goal of ending paramilitarism can be achieved, in the words of the Fresh Start Agreement, “once and for all.”⁸⁰

59. Under the Fresh Start Agreement, a three-person panel comprising Lord Alderdice, John McBurney and Monica McWilliams was set up to examine what is required to end paramilitarism.⁸¹
60. Despite these attempts, paramilitary activity remains rife in NI, with strong evidence indicating that the criminal activity these organisations engage in often has no political or ideological motivation. Moreover, housing segregation along religious lines continues to exist in parts of the region because of paramilitary intimidation, including sectarian and racist intimidation. The Committee on the Administration of Justice, a non-governmental organisation, has gone as far as to assert: ‘It is no exaggeration to suggest that housing is an area of public policy in Northern Ireland that is still extensively shaped by paramilitary control and coercion. The public policy response has not moved much beyond assistance in moving victims of intimidation. There is a lack of transparency and public scrutiny in the handling of the issue’.⁸² This can be a particular problem in situations of intimate partner violence, with both paramilitary intimidation and intimate partner violence making the home an unsafe place to live.⁸³

Housing segregation along religious lines continues to exist in parts of the region because of paramilitary intimidation, including sectarian and racist intimidation.

61. The failure of the security forces, criminal justice system and public authorities such as the Housing Executive to deal with such activity also represents a clear failure to protect the human rights of the victims of such criminal activity. Indeed, the victims are often in the very communities of the paramilitary groups, and therefore likely to already be marginalised and economically disadvantaged. While a programme of decommissioning of illegally held arms was central to the B/GFA, the continued activity of paramilitary groups represents a serious security threat that has yet to be appropriately resolved. This may be because the B/GFA failed to address the root causes of the conflict, which included social and economic disadvantage and marginalisation.⁸⁴

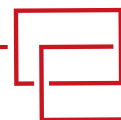
⁸⁰ Independent Reporting Commission, [‘Fourth Report’](#), HC 916 (December 2021).

⁸¹ [A Fresh Start: The Stormont Agreement and Implementation Plan](#), 17 November 2015, pp. 14-18.

⁸² Committee on the Administration of Justice, [‘Written Evidence to the Northern Ireland Affairs Committee inquiry into ‘The effect of paramilitaries on society in Northern Ireland’: Paramilitarism and housing intimidation’](#) (May 2022), para. 5.

⁸³ Allan Preston, [‘Workers stage protest over plans to close Belfast’s only homeless hostel for women’](#) (*Belfast Telegraph*, 12 January 2022).

⁸⁴ See Emma De Souza, [‘The Presence of Paramilitaries in Northern Ireland has Again Become Normalised’](#) (*Byline Times*, 3 March 2023).



62. The current situation in NI also shows how conventional responses to security threats in the form of emergency powers and special measures are not always the most effective ones, particularly when they fall short of human rights standards. Above, we have discussed how the use of stop-and-search by the PSNI under the JSA is perceived in both CNR and PUL communities as discriminatory and leads to alienation. One can also see how such perceptions of the police or other state authorities would be exploited by paramilitary groups in any society attempting to groom and recruit young people.

The current situation in NI also shows how conventional responses to security threats in the form of emergency powers and special measures are not always the most effective ones, particularly when they fall short of human rights standards.

63. The IRC states that a twin-track approach is necessary to tackle the challenge of paramilitarism. Along with an effective security response, there need to be concerted efforts to tackle the socio-economic problems that afflict those areas over which paramilitaries have their strongest influence. To date the first aspect of this approach, through the use of special measures in the JSA, has been unsatisfactory and lacking in transparency. The second aspect of this approach has been seriously hindered by the lack of a functioning regional government that could make the appropriate and much-needed policy and legislative interventions.

Equality provisions

64. Inequality and discrimination were inescapable features of NI during the Troubles and the peace agreement needed to address and safeguard against this in a robust manner. Section 75 of the Northern Ireland Act 1998, born out of the B/GFA, requires designated public authorities, in carrying out their functions relating to NI, to have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations across nine protected grounds. In 1998, this represented a remarkable move towards ending discrimination and progressing towards an equal society. It required designated public authorities to be proactive in addressing inequalities through submitting an Equality Scheme to the Equality Commission. In addition, those public authorities would be required to screen their policies to ensure there would be no adverse outcomes for any of the protected groups and if so, progress to a full Equality Impact Assessment. Equality needed to be embedded in all institutions in the region including the PSNI. There was an expectation that over time promoting equality of opportunity would become part of the DNA of public authorities. However, equality in NI is often conceived and dealt with primarily along CNR-PUL lines



by policymakers and politicians, while there are other facets of equality that are often overlooked, such as race and gender.⁸⁵

The B/GFA and the ensuing Northern Ireland Act 1998 clearly recognised that, for peace to be a reality, those responsible for security issues must not be above the law and, in particular, human rights and equality law.

65. Importantly in the security sphere, the PSNI continues to be a designated public authority for the purposes of equality legislation. Its current Equality Scheme covers the areas of people and culture, operational delivery, organisational processes and trust and confidence in policing.⁸⁶ The PSNI must also undertake an Equality Impact Assessment before introducing any new policy and open this to public consultation. The B/GFA and the ensuing Northern Ireland Act 1998 clearly recognised that, for peace to be a reality, those responsible for security issues must not be above the law and, in particular, human rights and equality law. However, this aspect of the Agreement, like many others, seems to have lost steam. Equality Impact Assessments are seen as a superficial exercise, rarely leading to improvements in policy and service delivery.⁸⁷ At present, without a single and comprehensive equality act, NI's equality protections lag behind those in the rest of the UK. Equality provisions in NI have made little to no progress since the Northern Ireland Act 1998, despite various commitments made in the New Decade New Approach Agreement in 2020 between the UK, Ireland and the NI Executive to progress strategies that would promote equality further.⁸⁸ NI, for example, still has no refugee integration strategy or childcare strategy, and the Racial Equality Strategy has not been accompanied by changes to legislation that would afford further protections to racialised communities in NI.⁸⁹ The equality provisions in the Agreement were remarkable for their time, but the lack of progress since illustrates the lack of concerted and comprehensive attention to equality issues, including racial and gender justice.

⁸⁵ On racial equality, see, for instance, Patrick Yu, '[NICRE submission to TEQ Race Relations Order Review](#)' (Northern Ireland Council for Racial Equality, 10 June 2023). On gender equality, see, for instance, Rachel Powell, '[Gender Inequality in Northern Ireland: Where are we in 2020?](#)' (*Women's Resource & Development Agency*, 7 February 2020).

⁸⁶ Police Service of Northern Ireland, '[PSNI Equality Scheme \(Equality, Diversity and Good Relations Strategy 2017-2022\)](#)' (2017).

⁸⁷ See, generally, Equality Coalition, '[Equal to the Task? Investigative powers and effective enforcement of the 'Section 75 equality duty'](#)' (January 2018). For an example, see Samaritans Northern Ireland, '[Samaritans in Northern Ireland respond to Department of Health Equality Impact Assessment](#)' (*Samaritans*, 12 June 2023).

⁸⁸ [New Decade, New Approach](#), January 2020, paras. 20, 2.2.7, 2.3, 4.3-4.4, 4.6.2-4.6.3.

⁸⁹ Elaine McGee, '[Stormont's commitment to tackling racial inequality questioned](#)' (*BBC News*, 24 November 2022).



One of the key criticisms has been around its failure to accurately reflect the role of the UK state in the conflict and its position in terms of insider and/or outsider, honest broker and/or protagonist.

66. The B/GFA is not without its critics. One of the key criticisms has been around its failure to accurately reflect the role of the UK state in the conflict and its position in terms of insider and/or outsider, honest broker and/or protagonist. The state has, for the most part, claimed to be the ‘honest broker’, but increasingly not only PUL and CNR communities but many others are seeing the UK government as an active player in failing to uphold human rights. The formula of the B/GFA, that paramilitaries needed to lay down their weapons so that the security forces could protect security, is no longer seen as sufficient or valid. Threats to security are seen to come from many quarters and there is a legitimate expectation by all communities that they should be treated fairly. It is not possible to compromise human rights and equality without provoking dissatisfaction and discontent. The use of the JSA powers and the issue of parading demonstrate that, where the authorities cannot satisfy communities that they are protecting everyone’s human rights, there is inevitably pushback.

It is not possible to compromise human rights and equality without provoking dissatisfaction and discontent.

67. The study now investigates the extent to which the peace process ensures that the UK government is accountable for its security-related actions and that the rule of law applies to all it does — including in the name of ‘national security’.

Lessons for other post-conflict societies

- Actors involved in the transition to a post-conflict society should prioritise human rights, equality and non-discrimination. This applies regardless of the role actual or perceived inequalities or human rights violations contributed to the conflict.
- Law- and policy-makers charged with post-conflict reform should seek to address the root causes of actual or perceived inequalities, particularly when these contribute to a conflict situation.
- Law- and policy-makers should seek to address the gendered consequences of the conflict, for all gender identities. The gendered aspects of new legal and policy frameworks should be accounted for.
- Law- and policy-makers should transition away from security-related measures and towards a normalisation of the legal framework. To the extent that security measures



remain in place, these should be operated transparently, and in compliance with the rule of law, human rights and equality laws.

- Law- and policy-makers should respect cultural identities when engaging in post-conflict reform. This should occur regardless of the role that cultural identities played in the conflict. Law- and policy-makers should carefully consider how to address communities' conflicting rights.
- Civil society organisations should continue pressuring law- and policy-makers to mainstream human rights, equality and non-discrimination during peace processes.

5. Accountability mechanisms

68. The NI peace process, through the B/GFA and subsequent agreements, led to the creation of several accountability bodies.⁹⁰ These include the Police Ombudsman, Policing Board, the Parades Commission, Criminal Justice Inspection NI, the NI Human Rights Commission, the Equality Commission NI, the Prisons Ombudsman and the Commission for Victims and Survivors. In addition, we have seen the conclusion of some high-profile and long running inquiries and inquests such as the Saville Inquiry into Bloody Sunday and the Inquest on the Ballymurphy massacre.⁹¹ Furthermore, NI has a strong non-governmental sector that is robust in holding the NI Executive and Westminster Government to account for their policies and practices.

69. It was the incorporation of the ECHR into domestic law, however, that was fundamental to peace in NI.⁹² The Convention allows victims of human rights abuses to seek redress for violations past and present through the courts, and by doing so, hold the state to account for its actions. Importantly, it also places a positive duty on all public authorities to protect human rights, which the UK government's stalled amendments to the HRA have sought to restrict (see below).

It was the incorporation of the ECHR into domestic law that was fundamental to peace in NI.

70. This section will examine how the peace process addressed:

⁹⁰ For an overview and a critique, see Amnesty International, '[Northern Ireland: Time to Deal with the Past](#)' (September 2013).

⁹¹ Bloody Sunday Inquiry, '[Report of the Bloody Sunday Inquiry](#)' (15 June 2010); *In the matter of a series of deaths that occurred in August 1971 at Ballymurphy, West Belfast* [2021] NI Coroner 6.

⁹² For an overview of the ECHR's role during and after the Northern Ireland Troubles, see Brice Dickson, *The European Convention on Human Rights and the Conflict in Northern Ireland* (Oxford: Oxford University Press, 2012).



- accountability for the PSNI;
- the mechanisms for holding the state to account for its role in the conflict, whether by being directly responsible for human rights violations or failing to prevent them; and
- the future of human rights protection in NI.

Policing

71. One of NI's greatest successes has been transformation of policing and the central role human rights played in that transformation process. The human rights record of the RUC was widely criticised during the Troubles and there remain some investigations into its conduct during that period.⁹³ Use of lethal force, a culture of sectarianism, collusion with loyalist paramilitaries, and subjecting detainees to inhuman treatment were some of the violations the RUC was implicated in or directly responsible for.⁹⁴ These violations were all undertaken in the name of 'security'. Therefore, CNR communities in NI had little faith in the RUC to address their security concerns or investigate crimes against them. The level of distrust in the police cannot be overstated. A peace agreement could not have been reached without acknowledging the need for wholesale and systemic change. This acknowledgement came in the B/GFA, which in turn led to the creation of an Independent Commission on Policing (the Patten Commission) that would make recommendations for the future of policing in NI.

One of NI's greatest successes has been transformation of policing and the central role human rights played in that transformation process.

72. The Patten Commission was unequivocal in putting human rights at the heart of policing. Its final report states, 'It is a central proposition of this report that the fundamental purpose of policing should be, in the words of the Agreement, the protection and vindication of the human rights of all.'⁹⁵ There was clear recognition that for peace to be sustainable, all communities in NI needed protection from discrimination and arbitrary interference with their human rights. They also needed to have a justified faith in the police to deliver this for them. For this reason, the Patten Commission engaged in a region-wide process of engagement and consultation. It

⁹³ See the case of *Jordan v. the United Kingdom*, Application No. 24746/94, Judgment, 4 May 2001, in which the UK was found to be in violation of the Article 2 ECHR obligation to effectively investigate potentially unlawful killings.

⁹⁴ See Param Cumaraswamy, '[Special Rapporteur on Independence of Judiciary calls for independent investigation into murder of Northern Ireland human rights attorney](#)', HR/99/21, 16 March 1999 and *Ireland v. the United Kingdom*, Application No. 5310/71, Judgment (revised), 20 March 2018 respectively. The original *Ireland v. the United Kingdom* judgment was handed down in 1978.

⁹⁵ Chris Patten, '[A New Beginning: Policing in Northern Ireland. The Report of the Independent Commission for Policing in Northern Ireland](#)' (September 1999).



issued public attitude surveys, met with individuals and organisations in private and through public meetings, and received written submissions to inform its recommendations to the UK government.

There was clear recognition that for peace to be sustainable, all communities in NI needed protection from discrimination and arbitrary interference with their human rights. They also needed to have a justified faith in the police to deliver this for them.

73. A major outcome of the Patten Commission's recommendations was the creation of the NI Policing Board and the adoption of affirmative action in recruiting to the police service. The Policing Board has a statutory duty to monitor the performance of the PSNI in complying with the Human Rights Act. It has a dedicated independent human rights advisor and publishes a Human Rights Annual Report. It has also conducted a number of human rights thematic reviews, including into the PSNI's handling of domestic violence and its policing of racist hate crime.⁹⁶
74. The Patten Commission articulated in strong terms the need for the police service to be accountable and transparent in its operations. Along with the right of redress to the courts, this approach meant that mechanisms were in place to help the police get it right first time. To this end, the Policing Board adopted a human rights framework which sets out the standards against which it will assess the PSNI's compliance with the Human Rights Act. Adherence to human rights is obviously a legal requirement for the PSNI as it is for all public authorities in the UK, but the Policing (Northern Ireland) Act 2000 has meant that adherence to human rights law has become essential to avoid public censure from the Board, adverse publicity in the media, criticism from non-governmental organisations and distrust from communities.
75. In addition, the Code of Ethics for the PSNI is also drawn from the ECHR and the UN Principles on the Use of Force and Firearms. The Code of Ethics explains that it 'is not merely a disciplinary tool', but is 'a comprehensive human rights document which draws upon the European Convention on Human Rights and other relevant human rights instruments'. Under the Code of Ethics, police officers are required to discharge their duties 'with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all individuals and their traditions and beliefs.'⁹⁷

⁹⁶ See Northern Ireland Policing Board, ['Thematic Inquiry on Domestic Abuse: Human Rights and Professional Standards Committee'](#) (March 2009) and Northern Ireland Policing Board, ['Thematic Review of Policing Hate Crime'](#) (June 2017) respectively.

⁹⁷ Police Service of Northern Ireland and Northern Ireland Policing Board, ['Police Service of Northern Ireland Code of Ethics'](#) (2008).



76. The NI Policing Board is comprised of representatives from NI's five largest political parties and a number of independent members. The willingness of political parties and members of the PSNI to engage in dialogue and exchange in a constructive and respectful manner demonstrates the tremendous progress made in NI.
77. The commitment to progress human rights protection led to systemic improvements within policing in NI. Importantly, the Patten Commission and the PSNI recognised that in order to protect security, the PSNI needed cooperation and engagement from all communities. That in turn required the justified support and trust of all communities. The reforms to policing in NI were designed and undertaken to secure support from CNR communities as well as PUL communities, and affirmative action was crucial in securing that support. The Patten Commission recommended a model of recruitment to the PSNI that would see the recruitment of Catholic officers quadruple to between 29 percent and 33 percent over a ten-year period. Affirmative action or special measures are recognised under human rights law as important means of addressing inequality. When affirmative action recruitment ceased in 2011, 29 percent of PSNI officers came from the Catholic community. Surveys also reveal increased confidence in the PSNI from CNR communities. According to a survey carried out by the Policing Board in 2021, 72 percent of respondents from a Catholic background said they had confidence in the PSNI's ability to keep their community safe.⁹⁸ In contrast, a survey carried out by the Patten Commission in 1999 had shown that only 43 percent of Catholic respondents expressed overall satisfaction with the police in NI.⁹⁹ The respective figures still remain lower than for PUL communities but nonetheless represent a significant improvement.
78. NI has been viewed as an exemplary model to other post-conflict societies on how to reform policing successfully. As one expert in human rights and policing explained in an interview:

*'...I don't know where else in the world, you're having an actual human rights adviser to a police accountability organisation ... I think those things are incredibly important kind of constitutional structural reasons why the peace process that led to the Good Friday Agreement, so to speak, and then Patten is a very significant continuing positive development.'*¹⁰⁰

Another expert on policing and human rights explained in an interview:

*'I think human rights, national security, covert policing, serious crime, they can work together. In fact, respecting human rights ensures that you deal with the national security issue because you don't create cause celebre for people to galvanise around, you know, like the names of so-called martyrs.'*¹⁰¹

⁹⁸ Police Service of Northern Ireland and Northern Ireland Policing Board, '[Northern Ireland Policing Plan Survey](#)' (12 May 2022).

⁹⁹ Chris Patten, '[A New Beginning: Policing in Northern Ireland. The Report of the Independent Commission for Policing in Northern Ireland](#)' (September 1999), pp. 13-17.

¹⁰⁰ Interview 001 (name redacted), human rights and policing expert, 7 April 2022 (via Zoom).

¹⁰¹ Interview 002 (name redacted), human rights and policing expert 5 April 2022 (via Zoom).

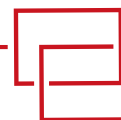


79. The reformed policing infrastructure also contains targeted accountability mechanisms. The internal accountability mechanism for the PSNI is its Professional Standards Department. When an officer or staff member falls short of standards of integrity and honesty, any allegations of criminality and/or misconduct are said to be thoroughly investigated and (when appropriate) the officer is subject to misconduct proceedings. The Professional Standards Department is responsible for ensuring these processes are undertaken in a fair, transparent and thorough manner. The department consists of three branches: an Anti-Corruption Unit; a Service Vetting Unit; and a Discipline Branch.¹⁰²
80. The Discipline Branch investigates misconduct matters which are referred internally or otherwise come to the attention of the PSNI. This can involve off-duty incidents, and misconduct or criminal acts in the workplace that have not been subject of a public complaint or involved a member of the public. The Discipline Branch takes forward misconduct proceedings following investigation, whether they are from Police Ombudsman's Office or internally investigated by Professional Standards Department. These proceedings can take the form of a hearing or local misconduct meeting. The Discipline Branch is also responsible for the approval of business interests for police officers and the review of these.
81. The Anti-Corruption Unit's aim is to prevent and detect wrongdoing and corruption by members of the PSNI. It seeks to achieve this by responding to information relating to alleged wrongdoing by PSNI employees as well as members of the public who seek to corrupt those in public office.
82. The Service Vetting Unit exists to protect the integrity and reputation of the PSNI, its assets and data from persons and organisations intent on or capable of disrupting the integrity, security or values of the Police Service. It is the aim of the PSNI, via the Service Vetting Unit, to provide an appropriate level of assurance as to the trustworthiness, integrity and reliability of all police officers, police staff and non-police personnel working for or on behalf of the PSNI.
83. Support for the Human Rights Act has been reinforced by successive Chief Constables of the PNSI who publicly welcomed the framework human rights law provided them with for decision making in challenging circumstances such as public order situations.¹⁰³ However, as time goes on, NI also demonstrates the need for continued efforts to protect and promote human rights. Transformation cannot be seen as a one-off event, and there has to be genuine willpower in both the local and national governments. For example, while affirmative action did lead to greater recruitment of Catholic officers up until 2011, the number of Catholics applying and being recruited has since fallen. This has led some commentators to conclude that the 50:50 recruitment policy ended too soon.¹⁰⁴ Others have questioned the culture within the PSNI and not only whether it is welcoming of Catholic officers but also how the PSNI continues to interact with CNR communities in its operations. The JSA and its out workings have been discussed in detail above. An expert in policing in NI further

¹⁰² Police Service of Northern Ireland, '[Professional Standards Department](#)' (PSNI).

¹⁰³ Interview 002 (name redacted), human rights and policing expert 5 April 2022 (via Zoom).

¹⁰⁴ Interview 003 (name redacted), human rights and policing expert, 24 March 2022 (in person).



explained in an interview how a freedom of information request from a media outlet had revealed that consistently over a five-year period, from the beginning of 2016 to the end of 2020, almost twice as many Catholics as Protestants were arrested and subsequently charged.¹⁰⁵ He went on to comment:

'It's also, to me at least, an issue about why didn't the PSNI tell people that this was an issue and investigate ... and there may be good reasons for it. But that's not the same issue necessarily as the issue about the religious issue in relation to recruitment, but it kind of raises a question. I mean, but lots of people think, oh, that's no surprise, but it should be a surprise really, and it should be an issue ... nobody has produced any evidence as to why that should be the case. But that fits you know with why only 30 percent of the PSNI are Catholic'.¹⁰⁶

84. As the quote suggests, disparate arrest rates do not necessarily evidence discriminatory policing—but they become a point of interest to commentators and journalists when there appears to be a lack of transparency and explanation for them. This in turn creates further suspicion and distrust from the community that is the subject of the disparate arrest rates. The lesson to be drawn from this example is that the creation of accountability mechanisms is not enough. In divided societies where there is a deep mistrust of security forces, accountability mechanisms need to be relentless in seeking transparency and openness, which in turn will be more likely to inspire trust and confidence from all communities.

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85. The PSNI's relationship with PUL communities has also continued to be a difficult one. Violent protests erupted in the summer of 2021 over opposition to the NI Protocol. Security therefore comes under threat again in NI from non-state actors expressing their grievance through violent means, which in March 2022 included a bomb threat to the Irish Foreign Minister, Simon Coveney.¹⁰⁷

86. There is no doubt that the PSNI is coming under increasing pressure as violence such as this erupts or is threatened. This can be seen with the recent New IRA attacks on

¹⁰⁵ [Rory Winters, 'Almost twice the number of Catholics as Protestants arrested and charged by PSNI' \(The Detail, 9 December 2021\).](#)

¹⁰⁶ Interview 001 (name redacted), human rights and policing expert, 7 April 2022 (via Zoom).

¹⁰⁷ Connla Young, ['New IRA claims responsibility for Strabane mortar attack on PSNI'](#) (*The Irish Times*, 25 November 2022); Allison Morris, ['High profile loyalist's arrest in Belfast raids believed to be in connection with hoax bomb attack on Simon Coveney'](#) (*Belfast Telegraph*, 8 June 2022).



the PSNI in November 2022 and February 2023.¹⁰⁸ Under such pressure, there may be a tendency to see accountability mechanisms as a distraction from or obstacle to 'getting on with the job'. However, for peace to remain, being accountable and transparent must be seen as an essential part of the job. It was precisely the absence of this that was a core contributing factor to the violence during the Troubles.

PSNI and MI5

87. There also remain outstanding recommendations from the Patten Commission with regards to accountability mechanisms. The Patten Commission recommended that ethical policy guidelines on informant handling be published, that informant handling only take place proportionately and with due regard for the law, and that a Commissioner for Covert Law Enforcement in NI be established. Instead of meeting these recommendations, the UK government formally transferred primacy for covert 'national security' policing away from the PSNI to MI5, which sits outside the Patten accountability framework. It has since been established during the course of litigation that MI5 had internal guidelines on authorising informant criminality, with government lawyers admitting in open court that the guidelines allowed MI5 informers to commit crimes, including murder.¹⁰⁹
88. The authorisation of murder by the security services is not merely a theoretical possibility in NI. The use of informers by the RUC has been highly contentious, with Operation Kenova currently investigating the involvement of an alleged state agent (codenamed Stakeknife) in kidnap, torture and murder by the IRA during the Troubles. The possibility for the police and MI5 to carry out gross violations, by proxy, through the use of informers has risen alarmingly since being made permissible in statute with the Covert Human Intelligence Sources (Criminal Conduct) Act 2021. The Act provides no express limits on the crimes that can be authorised. The legislation states that agents will have the authority to commit crimes under three circumstances: 'in the interests of national security; for the purpose of preventing or detecting crime or of preventing disorder; or in the interests of the economic well-being of the United Kingdom'. The alarmingly broad scope of this provision is serious cause for concern in a region where victims of state sanctioned human rights abuses are still seeking truth and justice.¹¹⁰

¹⁰⁸ Suzanne Breen, ["New IRA' admits responsibility for murder bid on senior police officer"](#) (*Belfast Telegraph*, 26 February 2023).

¹⁰⁹ Dan Sabbagh, ["Government lawyer tells court MI5 officers could authorise murder"](#) (*The Guardian*, 27 January 2021).

¹¹⁰ Reprieve, Privacy International, Pat Finucane Centre, Committee on the Administration of Justice and Rights & Security International, ["Briefing for the Second Reading of the Covert Human Intelligence Sources \(Criminal Conduct\) Bill"](#) (October 2020), paras. 11-13, 33.



The possibility for the police and MI5 to carry out gross violations, by proxy, through the use of informers has risen alarmingly since being made permissible in statute.

89. One of the Patten Commissioners, Clifford Shearing, noted that rather than see the 175 recommendations as one block, it was better to see the reform process in two streams. The first focused on the systems of policing – such as names, badges, recruitment and representation; training; and human rights. The second stream focused on the governance of security, or policing more broadly conceived. According to John Topping, one of the major lessons learned is that:

‘...[W]e did see a very significant over concentration on the first stream of reform – or systems – at the expense of the second stream. From 2001 through to 2010/11, the policing budget in NI increased from around £650m to £1.2b. And in view of the wider policing oversight and monitoring structures put in place along with governing legal frameworks, absolutely everything police reform, came to be about the police organisation itself to the exclusion of wider thinking on policing. And police-centric performance and oversight metrics became the defining measure of success of policing ‘being seen’ to work – and importantly, change.’¹¹¹

90. Topping believes that over 20 years on from the Patten Commission’s recommendations, trust, legitimacy, recruitment to the police, and the ability to deliver ‘normal’ policing in those communities most impacted by the conflict remain significant challenges in spite of the reform process. He points to Patten Recommendation 32 – which proposed local tax-raising powers for policing and community safety activities – as the only one of the 175 never to make it into legislative form, and therefore believes that there was a ‘very deliberate shunning of wider thinking around policing more broadly conceived and community input into policing.’¹¹² This perspective suggests that the accountability framework outside of the Patten reforms should be viewed more holistically and that broadening the language around policing change (and not narrowing the scope of what defines and who should be involved in the business of policing) is ‘a key lesson never really learned from the reform process’ in NI.¹¹³

91. We now turn to the question of dealing with NI’s past and the accountability mechanisms for human rights violations that took place during the Troubles.

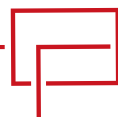
The legacy of ‘The Troubles’

92. This report would not be complete without discussion of the many victims of the Troubles and their quest for justice.

¹¹¹ John Topping, [‘A comparative discussion on police reform after George Floyd: Where do we go from here? A Northern Ireland Perspective: Panel discussion with Jennifer Cobbina, Michelle Phelps, Ian Loader and John Topping’](#) (2022), p. 3.

¹¹² Ibid. at p. 4.

¹¹³ Ibid. at p. 5.



93. The B/GFA did not propose the creation of an overarching mechanism, such as a Truth and Reconciliation Commission, to deal with the legacy of the conflict and provide answers to victims of the Troubles, and there remain some doubts about the efficacy of such a process.¹¹⁴ Instead, as a response to Article 2 ECHR obligations as well as commitments made during peace talks, a variety of measures around dealing with the past have emerged. Article 2 ECHR places a firm duty on the state to initiate an ‘effective investigation by an independent official body into any death occurring in circumstances in which it appears that one or other of the ... substantive obligations [under the Article, which concerns the right to life] has been, or may be, violated, and it appears that agents of the state are, or may be, in some way implicated’.¹¹⁵
94. To date, around 1,000 deaths have been reviewed through inquests and inquiries in NI in response to the Article 2 obligation, leading to some answers for families. In addition, the PSNI, the Historical Enquiries Team (HET) (until 2014), specialist outside police investigations (e.g. the Operation Kenova investigation into Stakeknife) and the Police Ombudsman have all been involved in legacy-related investigations.¹¹⁶ Following investigations by these bodies, the decision on whether or not to prosecute in a legacy case is made by the Public Prosecution Service.¹¹⁷ In addition, some victims and family members have pursued litigation through the domestic courts and up to the European Court of Human Rights. There is of course a distinction between litigation regarding a potentially unlawful killing itself, and litigation linked to a lack of an effective investigation into the act. This distinction and other Article 2 issues and case examples were helpfully discussed by the UK Supreme Court in its judgment on the failure of the UK government to conduct an effective inquiry into collusion allegations in relation to the murder of the NI human rights solicitor Pat Finucane – a case which remains the subject of legal proceedings.¹¹⁸
95. These legacy mechanisms have been riddled with setbacks regarding the securing of witnesses, withholding of evidence and cuts in resources.¹¹⁹ The piecemeal

¹¹⁴ See Brian Rowan, [‘Good Friday Agreement: Who wants to tell the ‘truth’ about NI’s past?’](#) (BBC News, 2 March 2023).

¹¹⁵ *R v. Her Majesty’s Coroner for the Western District of Somerset and another, ex parte Middleton* [2004] UKHL 10, para. 3. For an overview of the Article 2 procedural obligation to effectively investigate potentially unlawful killings, and its application in Northern Ireland, see Rights & Security International, [‘Northern Ireland Legacy: How to Uphold International Human Rights Law’](#) (August 2021).

¹¹⁶ For an overview and a critique, see Amnesty International, [‘Northern Ireland: Time to Deal with the Past’](#) (September 2013). See also Claire Mills and David Torrance, [‘Investigation of former Armed Forces personnel who served in Northern Ireland’](#), CBP 8352 (House of Commons Library, 18 May 2022).

¹¹⁷ Kieran McEvoy et al, [‘Prosecutions, Imprisonment and the Stormont House Agreement: A Critical Analysis Of Proposals On Dealing With The Past in Northern Ireland’](#) (April 2020).

¹¹⁸ *In the matter of an application by Geraldine Finucane for Judicial Review (Northern Ireland)* [2019] UKSC 7. The Irish News, [‘Secretary of state to pay further £5,000 damages to widow of solicitor Pat Finucane’](#) (The Irish News, 30 March 2023).

¹¹⁹ See for example, the arrest of journalists that had ‘embarrassed authorities by obtaining documents relating to a mass murder’: Jim Waterson, [‘Treatment of Northern Ireland journalists likened to police state, court hears’](#) (The Guardian, 28 May 2019); Claire Simpson, [‘PSNI admits it should have told](#)



approach has been far from satisfactory, leaving victims to try to determine how best they can receive truth and justice. Furthermore, the Council of Europe's Committee of Ministers continues to monitor the execution of a number of NI cases in which the UK was found to be in breach of its Article 2 obligations and has expressed profound concern at the lack of progress in many of these.¹²⁰

These legacy mechanisms have been riddled with setbacks regarding the securing of witnesses, withholding of evidence and cuts in resources.

96. While the section above has discussed the PSNI's embrace of human rights standards in many aspects of its work, its record in terms of legacy cases has been an unsatisfactory one. The arrest of journalists Trevor Birney and Barry McCaffrey in connection with a film documentary alleging police collusion in the 1994 massacre at Loughinisland provides just one example of PSNI's failings when past crimes have been investigated. The journalists were arrested in August 2018 on suspicion of stealing an unredacted Police Ombudsman report into the massacre. The criminal investigation was discontinued after the legality of the search warrants was successfully challenged. The PSNI subsequently paid £875,000 in damages, with the Chief Constable apologising for police actions. Notwithstanding the implications this had for freedom of the media it sent a highly negative message about the police's attitude to dealing with the past. Prior to this, in 2014, the Police Ombudsman had initiated legal action against the Chief Constable for failing to hand over intelligence material relating to investigations into allegations against the police in 60 murders.¹²¹

97. In 2014, the parties to the Stormont House Agreement agreed to a set of four mechanisms to deal with the legacy of the past. Combined, these mechanisms would have guaranteed:

- Article 2 compliant investigations for past human rights abuses, whereby perpetrators could be prosecuted;
- Information retrieval, whereby families could learn the truth about the circumstances of their next of kin's death;

[Loughinisland journalists about review which criticised handling of their arrests'](#) (*The Detail*, 3 February 2023).

¹²⁰ [Jordan v. the United Kingdom](#), Application No. 24746/94, Judgment, 4 May 2001; [Kelly and others v. the United Kingdom](#), Application No. 30054/96, Judgment, 4 May 2001; [McKerr v. the United Kingdom](#), Application No. 28883/95, Judgment, 4 May 2001; [Shanaghan v. the United Kingdom](#), Application No. 37715/97, Judgment, 4 May 2001; [McShane v. the United Kingdom](#), Application No. 43290/98, Judgment, 28 May 2002; [Finucane v. the United Kingdom](#), Application No. 29178/95, Judgment, 1 July 2003; [Hemsworth and another v. the United Kingdom](#), Application No. 58559/09, Judgment, 16 July 2013; [McCaughy and others v. the United Kingdom](#), Application No. 43098/09, Judgment, 16 July 2013.

¹²¹ [BBC News, 'Police Ombudsman: Attacks at centre of PSNI legal action'](#) (*BBC News*, 4 June 2014).



- An oral history archive where people could share experiences of the Troubles; and
- The establishment of an Implementation and Reconciliation Group.

98. However, this aspect of the Stormont House Agreement was never implemented despite significant support for it.¹²² Instead, the Westminster government decided to unilaterally introduce the Northern Ireland Troubles (Legacy and Reconciliation) Bill, which, in contrast to the SHA, has been met with widespread, cross-community criticism and concern.¹²³ There are significant implications for human rights should the bill become law.¹²⁴ In summary, it will:

- Directly limit the ability of people in NI to challenge alleged breaches of the ECHR in either the NI Coronial Courts or the NI civil courts. This will mean that those families essentially waiting in a queue for an inquest, or those whose inquests have started but have not yet been concluded, will be denied one.
- Create immunity for those responsible for even the most serious human rights abuses, provided ‘the person has provided an account which is true to the best of their knowledge and belief’ (a low standard).¹²⁵
- Fetter the independence of mechanisms and processes by allowing the Chief Commissioner of the Independent Commission for Reconciliation and Information Recovery (ICRIR), a newly created position, to prohibit information from being published in any report of the ICRIR on ‘national security’ grounds.¹²⁶

99. The Council of Europe’s Commissioner for Human Rights has stated that the bill ‘raises serious questions about the extent to which the proposed mechanism to review Trouble-related cases is compliant with ECHR standards on independent and effective investigations’.¹²⁷ At time of writing, it appears that the Legacy Bill’s mechanisms – if and when the Bill becomes law – will be challenged on ECHR grounds before the

¹²² Legacy Practitioners Group, [‘Legacy Practitioners Open Letter: Legacy commitments in NDNA must be returned to’](#) (*Rights & Security International*, 17 June 2021).

¹²³ Newton Emerson, [‘Everyone opposes the Troubles legacy Bill, but the Conservatives may get away with it’](#) (*The Irish Times*, 26 May 2022); Connla Young, [‘Church leaders: Legacy bill ‘will not achieve any of its purposes’](#) (*The Irish News*, 23 November 2022).

¹²⁴ See Rights & Security International, [‘Northern Ireland Legacy: How to Uphold International Human Rights Law’](#) (August 2021).

¹²⁵ In June 2023, the government introduced amendments which would empower ICRIR to probe the truthfulness of any account; however, most commentators and community representatives argue that these provisions do not go far enough: see BBC Sounds, [‘Talkback, 12 June 2023’](#) (12 June 2023); Freya McClements, [‘Amendments to NI Legacy Bill criticised as ‘smoke and mirrors’ by campaigners’](#) (*The Irish Times*, 8 June 2023).

¹²⁶ Secrecy and the reliance on ‘national security’ exemptions to State disclosure have been an underlying problem with legacy mechanisms: see Daniel Holder, [‘Police accountability, the Irish peace process and the continuing challenge of secrecy’](#) (2013) 54(3) *Race & Class* 77-86.

¹²⁷ Dunja Mijatović, [‘United Kingdom: backsliding on human rights must be prevented’](#) (*Council of Europe Commissioner for Human Rights*, 4 July 2022).



courts, with a case likely to be brought by a victim or survivor, or an inter-State case brought by the Irish government.¹²⁸

100. The Bill makes an unprecedented provision for amnesty for even the most serious human rights abuses, whether carried out by state or non-state actors. The denial of access to Article 2-compliant mechanisms has led some commentators to suggest that the previous system of inquests was in fact working too well for the government's liking in uncovering state crimes.¹²⁹ The very basis of the B/GFA is under threat as a result of these provisions, and they certainly move the British state firmly out of the frame of being a neutral 'honest broker' in victims' search for justice.

101. In December 2022, two UN Special Rapporteurs, Fabián Salvioli (Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence) and Morris Tidball-Binz (Special Rapporteur on extrajudicial, summary or arbitrary executions) issued a joint statement calling on the UK government to withdraw the bill. The experts warned that the bill 'fails to comply with the State's obligation to investigate serious human rights violations committed during the "Northern Ireland Troubles" and denies truth and remedy for victims.'¹³⁰

The experts warned that the bill 'fails to comply with the State's obligation to investigate serious human rights violations committed during the "Northern Ireland Troubles" and denies truth and remedy for victims.'

102. Since the time of this communication, the UK government has made several amendments to the pending legislation; however, these appear to have had only a minimal impact on the Bill's disregard of the UK's obligation to effectively investigate serious human rights violations.¹³¹

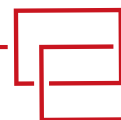
103. Accordingly, legacy is one aspect of the peace process that has fared badly, including when compared with other post-conflict societies. At the time of writing, the Legacy Bill is poised to become law before the end of the 2022-23 Parliamentary session.

¹²⁸ The Northern Ireland Court of Appeal rejected a pre-emptive challenge against the legislation on the grounds that the Bill had not yet become law: see [Re Patricia Burns and Daniel McCready's Application for Leave to Apply for Judicial Review](#) [2022] NICA 20. On the Irish government, see Sandra Hurley, ['Legal action over Troubles Legacy Bill 'not ruled out' – Taoiseach'](#) (RTÉ, 9 March 2023).

¹²⁹ Committee on the Administration of Justice, ['Written evidence submitted by the Committee on the Administration of Justice \(CAJ\), related to Addressing the Legacy of Northern Ireland's past: The UK Government's New Proposals inquiry \(LEG0044\)'](#) (2022), p. 8.

¹³⁰ Fabián Salvioli and Morris Tidball-Binz, ['UK: Flawed Northern Ireland 'Troubles' Bill flagrantly contravenes rights obligations, say UN experts'](#) (UN Office of the High Commissioner for Human Rights, 15 December 2022).

¹³¹ [Committee on the Administration of Justice, 'Submission to the Committee of Ministers in relation to the supervision of the cases concerning the action of the security forces in Northern Ireland \(January 2023\)'](#) (2023).



Reform of the Human Rights Act 1998

104. The current UK government has also aimed to ‘reform’ – or replace – the Human Rights Act 1998 (HRA), in essence greatly reducing the strength of human rights protections in UK law. At the time of writing, the UK government’s Bill of Rights Bill’s passage through Parliament had been halted, but concerns remain that it will reappear in a similar form in the future.¹³²
105. Giving domestic effect to the ECHR was a cornerstone of the B/GFA because it would give victims of human rights abuses in NI direct access to the courts. While the government claimed this Bill would not represent a withdrawal from the European Court of Human Rights, the role of the UK courts in determining ECHR rights would be significantly altered if it became law. Many civil liberties groups have commented on how the proposed British Bill of Rights would represent a retrogression of rights protections in the UK. At the same time, the rights that would have remained in law, were the Bill to have passed, would nevertheless have been weakened by the provisions restricting access to the courts. For example, the Bill would have introduced a new permission stage requiring people making a human rights claim to show they have suffered a ‘significant disadvantage’ before their claim could be heard by a court.¹³³ Some of these clauses would have applied differently in NI, which is of particular concern for the integrity of the B/GFA and the peace process.¹³⁴
106. Furthermore, the Bill of Rights Bill sought to undermine the proportionality test – that is, the analysis of whether a law or government action is a necessary and proportionate means of achieving a legitimate aim, such as protecting national security or public order. Under Clause 7, courts would have been required, when deciding whether laws are incompatible with the ECHR, to treat Parliament – by having enacted the relevant legislation – as having ‘decided’ that the law in question strikes an appropriate balance between the relevant competing factors. The Bill would also have required courts to ‘give the greatest possible weight to the principle that, in a Parliamentary democracy, decisions about how such a balance should be struck are properly made by Parliament’. In the past, the proportionality test has been fundamental to deciding the legality of counterterrorism and other security measures, including provisions for stop-and-search and surveillance.¹³⁵ There are real questions about how such a provision would have impacted on the courts’ and civil society’s ability to ensure that any security measures in NI are proportionate to the level of threat from paramilitary organisations. The experience of NI during the Troubles has clearly demonstrated how disproportionate and discriminatory security measures both fuel and prolong conflict.

¹³² See BBC News, [‘Bill of Rights: Call to scrap plans to rewrite human rights law’](#) (BBC News, 25 January 2023).

¹³³ [Bill of Rights Bill](#), Session 2022-23, Clause 15

¹³⁴ See Rights & Security International, [‘Bill of Rights Bill: Particular Implications in Northern Ireland’](#) (Rights & Security International, 4 July 2022).

¹³⁵ See Enzo Cannizzaro and Francesca De Vittor, ‘Proportionality in the European Convention on Human Rights’, in Robert Kolb and Gloria Gaggioli (eds.), [Research Handbook on Human Rights and Humanitarian Law](#) (Cheltenham: Edward Elgar, 2013).



107. Additionally, Article 2 of the NI Protocol and the obligation of the UK Government under international law to ensure the non-diminution of human rights will be a touchstone of human rights protections in NI in the years to come. The requirement of non-diminution of human rights standards strongly suggests that the UK will need to remain within the jurisdiction of the European Court of Human Rights, and that it will need to retain the HRA (or adopt laws with essentially the same content).¹³⁶ As the B/GFA inaugurated the passage of the HRA and the Agreement's operation is part of the UK government's international law obligations, the continued implementation of this important rights-protecting legislation is vital for human rights in NI, especially when it comes to security measures.

Human rights protections are currently or potentially under threat from actions at Westminster that often seem to give little practical or legal consideration to NI history or context.

108. This paper has discussed the importance of human-rights-compliant security laws, yet in NI, human rights protections are currently or potentially under threat from actions at Westminster that often seem to give little practical or legal consideration to NI history or context. The parameters of the debate have shifted dramatically so that we are now at the same juncture as during the Troubles, where domestic human rights standards may become insufficient for assessing and challenging security laws.

Lessons for other post-conflict societies

- Law- and policy-makers should create a robust framework for ensuring respect for human rights and equality laws. This may require the introduction of new human rights and equality laws, in part to align the state's legislative framework with international human rights treaties.
- Law- and policy-makers should ensure that mechanisms exist to address conflict-related crimes, particularly those which would amount to gross human rights abuses. This may require the creation of new accountability mechanisms for conflict-related offences.
- Governments should ensure transparency about their role in the conflict, ensuring that an independent and impartial tribunal has the powers and resources to hold current and former government members to account for crimes allegedly committed during the conflict.
- Governments should ensure that any mechanism for achieving post-conflict justice is sufficiently independent from the state.

¹³⁶ Rights & Security International, '[Submission to the European Affairs Sub-Committee on the Protocol on Ireland/Northern Ireland consultation on the Northern Ireland Protocol Bill](#)' (3 November 2022).



- Governments should provide sufficient resources and funding to post-conflict accountability mechanisms.

6. Conclusion

109. As stated at the beginning of this study, the B/GFA ‘stopped us from killing each other’. This success should not be undervalued. The Troubles were responsible for over 3,500 deaths during a 30-year period. An agreement that secured the cessation of violence is something to be celebrated and learned from.

110. In many ways, NI is a very different place to live than it was in 1998. The transformation of policing, the removal of Army installations and check points, and the stark decrease in security alerts may make NI seem like a normalised society to many outside observers.

111. This analysis has contended that human rights guarantees were fundamental to securing peace, but that beliefs about what those guarantees could achieve, especially without strong government support in practice, were erroneous and over-ambitious. For indeed, over 22 years after the Human Rights Act 1998 came into effect in October 2000, it could also be argued that little has changed. The region still remains a divided society with segregated housing and education, and sectarian symbols, flags and graffiti still prevalent.

112. As can be seen from this investigation, human rights guarantees in NI did not go far enough. One of the common criticisms of the B/GFA is that it failed to acknowledge the role of the British state as a protagonist in the conflict, allowing the state to present itself instead as an ‘honest broker’. This has meant that the state was entrusted with the role of rectifying the wrongs of the past, without a requirement that the state disclose and reckon with its own role in fuelling and prolonging the conflict. As a result, the historical and sometimes counter-productive response of emergency and special powers to security threats remains the default response up to the present day. This analysis has shown how much-needed data on the use of those powers has not been forthcoming, despite the concerted efforts of accountability mechanisms such as the Policing Board. It has discussed how the types of official interventions required to deal effectively with paramilitarism have not been made because of the absence of a functioning Executive in NI.

Rather than human rights standards becoming ingrained in the culture of government and public authorities in NI, they are still in many cases an afterthought or seen as an obstacle to ‘business as usual’.



113. Furthermore, rather than human rights standards becoming ingrained in the culture of government and public authorities in NI, they are still in many cases an afterthought or seen as an obstacle to 'business as usual'. While there was a period shortly after the B/GFA when the police and other public bodies in NI appeared to embrace the value of human rights protections, that approach dwindled as the Westminster and local governments' relationships with human rights lawyers, activists and indeed court judgments became increasingly fractured.
114. The lesson to be drawn from NI's peace process is that real security and human rights are inextricably linked. It is not possible to guarantee security, in the sense of public safety and the survival of a functioning state, without adherence to a human rights framework. Security laws that do not comply with human rights standards are often executed in a discriminatory manner and therefore counterproductive.
115. Furthermore, all parties to a peace agreement must acknowledge their roles in the conflict. The state must acknowledge its own role in threatening and violating human rights, including the rights to life, liberty and security of person, and be prepared to be held accountable. The state must also be prepared to learn from its own mistakes. The experience of the peace process in NI is that instead of embracing a role as a guarantor of fundamental rights, the UK state is regressing; the former Secretary of State for NI, Brandon Lewis, has even stated that scrutiny of state security services amounts to a witch hunt.¹³⁷ That regression is being accompanied by increasing anxiety and unrest, especially in relation to the NI Protocol/Windsor Framework, and the so-called Irish Sea border following Brexit, which means that the NI Assembly and Executive is not operational at the time of writing.¹³⁸

The state must acknowledge its own role in threatening and violating human rights, including the rights to life, liberty and security of person, and be prepared to be held accountable.

116. Peace in NI could not have been achieved without a commitment to human rights and without the legislation and structures that cemented that commitment. It is also important to note that the HRA was only a start for many of those involved in the negotiations. Monica McWilliams, for example, claims that it was clear that a bespoke Bill of Rights for NI was not an aspiration, but a promise. The B/GFA states, 'The NIHRC will be invited to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights [are]

¹³⁷ See Brandon Lewis MP, '[Brandon Lewis: My Northern Ireland legacy plan. No longer will our veterans be hounded about events that happened decades ago.](#)' (*Conservative Home*, 9 June 2022).

¹³⁸ Andrew McDonald, '[Northern Ireland's DUP to vote against Windsor Framework Brexit deal](#)' (*POLITICO*, 20 March 2023).



to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and – taken together with the ECHR – to constitute a Bill of Rights for Northern Ireland’.¹³⁹ McWilliams and many others would see the absence of a Bill of Rights for NI as one of the key outstanding commitments of the B/GFA, which remains even though the NIHRC fulfilled its statutory duty by handing over its advice on a Bill of Rights to the Secretary of State in 2008.¹⁴⁰

117. As well as these outstanding commitments, there is a sense now that things are starting to unravel. This paper has discussed the UK government’s stalled ‘reforms’ to the HRA and its NI legacy proposals, which would be breaches of the B/GFA. NI also does not have a sitting Executive, and there has been unrest in loyalist areas. Some loyalist paramilitaries have withdrawn their support for the B/GFA. There is nervousness and anxiety amongst community groups about what future summers may bring in terms of further unrest. There is a sense that even the Policing Board is losing some of its hard-won authority. The government’s legacy proposals and plans to overhaul the HRA are having a downstream effect on the duty bearers. When the commitment is no longer there from the top, the institutions that are mandated to hold those duty-bearers to account are weakened, whatever the magnitude of their efforts to hold their ground.

118. This analysis concludes by underscoring the importance of human rights in a post-conflict context. We have reflected on the lessons to be learnt following the twenty-fifth anniversary of the B/GFA, but NI is in a precarious place. The human rights secured in the B/GFA are under serious threat. It is not the case that those human rights are no longer necessary, but it is the case that those human rights have never been sufficiently realised and have been under sustained assault for many years. The results of the May 2022 Assembly elections, in which nationalist political party Sinn Féin secured the greatest number of seats, indicate that for many, a more prosperous and just future for NI lies through a change in the constitutional settlement and in re-unification with Ireland. This feeling has been augmented by the results of the May 2023 local elections where nationalist parties secured the greatest number of votes.¹⁴¹ This desire for constitutional change is of course a legitimate, even if still highly controversial, aspiration recognised in the B/GFA. (RSI, which commissioned this research, takes no position regarding what the constitutional status of NI should be.) As debates take place in any post-conflict society about future constitutional settlements, it is inevitable that some communities will feel at risk and threaten or use violence to articulate their opposition. In such circumstances, NI has clearly shown there is a vital need for all communities to be assured in words and practice that their human rights will be protected. The absence of that assurance makes violence more likely.

¹³⁹ [Belfast/Good Friday Agreement](#), 10 April 1998, ‘Human rights’, para. 4.

¹⁴⁰ Northern Ireland Human Rights Commission, [‘A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland’](#) (10 December 2008).

¹⁴¹ Shawn Pogatchnik, [‘Sinn Féin scores record win in Northern Ireland as voters rage at DUP blockade of Stormont’](#) (*POLITICO*, 21 May 2023).



7. Lessons for other post-conflict societies

Ensuring non-discrimination and compliance with human rights in national security laws and policies:

- Authorities involved in the transition to a post-conflict society should prioritise human rights, equality and non-discrimination. This applies regardless of the role actual or perceived inequalities or human rights violations contributed to the conflict.
- Law- and policy-makers charged with post-conflict reform should seek to address the root causes of actual or perceived inequalities, particularly when these contribute to a conflict situation.
- Law- and policy-makers should seek to address the gendered consequences of the conflict, for all gender identities. The gendered aspects of new legal and policy frameworks should be accounted for.
- Law- and policy-makers should transition away from security-related measures and towards a normalisation of the legal framework. To the extent that security measures remain in place, these should be operated transparently, and in compliance with the rule of law, human rights and equality laws.
- Law- and policy-makers should respect cultural identities when engaging in post-conflict reform. This should occur regardless of the role that cultural identities played in the conflict. Law- and policy-makers should carefully consider how to address communities' conflicting rights.
- Civil society organisations should continue pressuring law- and policy-makers to mainstream human rights, equality and non-discrimination during peace processes.

Creating effective accountability mechanisms:

- Law- and policy-makers should create a robust framework for ensuring respect for human rights and equality laws. This may require the introduction of new human rights and equality laws, in part to align the State's legislative framework with international human rights treaties.
- Law- and policy-makers should ensure that mechanisms exist to address conflict-related crimes, particularly those which would amount to serious human rights violations. This may require the creation of new, novel accountability mechanisms for conflict-related offences.



- Governments should ensure transparency about their role in the conflict, ensuring that an independent and impartial tribunal has the powers and resources to hold current and former government members to account for crimes committed during the conflict.
- Governments should ensure that any mechanism for achieving post-conflict justice is sufficiently independent from the State.
- Governments should provide sufficient resources and funding to post-conflict accountability mechanisms.

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governments take in the name of national security respect
human rights. This report aims to bolster joint advocacy
efforts for the creation of oversight mechanisms to ensure
the UN's respect for human rights when it acts in the name of
counter-terrorism.

Cover photo: Peace Bridge Derry by Northern Counties

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