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# Civil and Human Rights Violations in Northern Ireland: Effects and Shortcomings of the Good Friday Agreement in Guaranteeing Protections

By Lynn Wartchow\*

## I. INTRODUCTION

¶1 The history of Northern Ireland as a distinct polity began in 1921 when the six counties of the north of Ireland were partitioned from the twenty-six counties of the south.<sup>1</sup> The seventy-seven years that followed this initial partition saw what is commonly referred to as “The Troubles,” a term that masks a state of affairs tantamount to civil war. The Troubles produced a wide range of civil and human rights violations at the hands of state actors as well as state collusion with paramilitaries. Violations included verbal abuses and threats, torture and cruel punishment, systematic violations of the right to fair trial and other issues of justice, and finally a considerable number of violations of the right to life.

¶2 This paper will explore three primary assertions. First, the political structure of Northern Ireland prior to 1998—being a devolved government within the United Kingdom—bolstered an environment in which paramilitary violence, civil oppression and state human rights abuses were tolerated, and at times sanctioned, for more than seventy years. Second, the Good Friday Agreement of 1998 has imparted both an evolved constitutional framework and formal guarantees of minimal human rights protections in Northern Ireland. Third, while the Good Friday Agreement imparts such constitutional government with an original attention to human rights, the Agreement is flawed in delivering true sovereignty and full human rights protections to the people. Therefore, the climate in Northern Ireland remains highly susceptible to civil strife and ongoing human rights violations and is destined to so continue unless further action is undertaken to bring such guarantees into effect.

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<sup>1</sup> The partitioning of the six northern counties from the rest of Ireland was effectuated through the Government of Ireland Act of 1920, which created a Parliament in Northern Ireland. The southern twenty-six counties became the Free Irish State in 1922.

## II. HISTORICAL BACKGROUND

### A. *The Rise of the IRA and Paramilitary Corruption of the State*

¶3 Prior to the partition, a paramilitary group known as the Irish Republican Army (hereinafter referred to as the IRA) had engaged the ruling British government in guerilla warfare on the whole of the island and in Britain since 1919, fighting for Irish autonomy from Great Britain and home rule of Ireland. While the British ultimately relinquished control of the south of Ireland in 1921, they reserved the north as a self-governing entity within the United Kingdom. The British had primary interests of protecting the then Protestant majority in the North who asserted British nationality and loyalty to the Queen. The Catholic minority in Northern Ireland continued to reject the legitimacy of British rule, and the IRA campaign persisted, as did violent State and paramilitary responses. Initially, after the partition, the IRA was dormant. However, as a result of years of the abridgement of the civil rights of Catholics, the IRA was resurrected.<sup>2</sup> The consequent succession of violence between paramilitaries, the British government, and local security forces escalated over several decades into a full-blown civil war in which the ruling government colluded with paramilitaries in an attempt to suppress the violent political campaigns of the extreme nationalists.<sup>3</sup>

### B. *Stormont Parliament and the Failure of the Civil Rights Movement in Northern Ireland*

¶4 As a self-governing mechanism under authority of the United Kingdom, Northern Ireland established a Parliament known as “Stormont” in 1922.<sup>4</sup> Stormont had only limited legislative authority in such areas as local government, law and order, health and social services, education, planning, internal trade and industrial development, and agriculture. The Westminster Parliament in London, in which Northern Ireland was only marginally represented, maintained direct rule over the other areas of national importance. Similarly devolved governments exist historically or currently in both Scotland and Wales.

¶5 For the first fifty years of its operation and to the constant protest of the Catholic population, Stormont parliament was dominated by a Protestant unionist<sup>5</sup> majority.<sup>6</sup>

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<sup>2</sup> The loyalist paramilitaries also emerged during this time. The most active loyalist paramilitary groups were the Ulster Volunteer Force (UVF) and the Ulster Defense Association (UDA).

<sup>3</sup> “Republican” refers to those who promote a United Ireland through non-violence. The Sinn Féin, headed by Gerry Adams, is the most reputable republican organization in Northern Ireland historically and currently. “Nationalist” is sometimes used to refer to the more extreme republicans who advocated the use of violence to further their political goal of uniting Ireland. The IRA was the most notorious and active of nationalist groups prior to 1998. IRA splinter groups the Real Irish Republican Army (RIRA) and the Continuation Irish Republican Army (CIRA) are the nationalist groups that currently advocate violence and terrorism, as the IRA now renounces violence and is a legitimate and popular political party in Northern Ireland.

<sup>4</sup> The Government of Ireland Act of 1920 provided for the establishment of a Northern Ireland parliament. In addition to having Stormont, Northern Ireland also occupied seats on the Westminster Parliament.

<sup>5</sup> “Unionist” refers to those who favor preserving a union with the United Kingdom. “Loyalist” refers to more extreme unionists who advocated the use of violence in order to preserve this unity.

<sup>6</sup> Cara Hirsch, *Policing Undercover Agents in the United Kingdom: Whether the Regulation of Investigatory Powers Act Complies with Regional Human Rights Obligations*, 25 *FORDHAM INT'L L.J.* 1282, 1292 (2002).

With its delegation of local legislative powers, the unionist Stormont instituted a series of discriminating policies against Catholics in areas such as housing, employment, and voting rights.<sup>7</sup> Encouraged by the success of the American civil rights movement, both civilian and political<sup>8</sup> Catholics initially responded to discrimination through peaceful civil rights demonstrations. However, the State did not trust that such opposition could be peaceful given that it came from the same community that bred the increasingly violent IRA. Accordingly, local security responses to the otherwise peaceful protests were often preemptively violent, peaking in 1972 with the murder of thirteen civilian demonstrators in the incident known as Bloody Sunday.<sup>9</sup> Although Bloody Sunday raised the issue of alleged violations of the right to life under international law,<sup>10</sup> the subsequent inquiry into the Bloody Sunday killings absolved the British troops of any wrongdoing. The inquiry's verdict cemented the Catholic-Protestant divide and put to rest any notion as to the peaceful recognition of equal rights.<sup>11</sup> In the year after Bloody Sunday, a suspended Stormont Parliament was altogether abolished and Northern Ireland was placed under direct rule of Westminster Parliament for the next two-and-a-half decades, leaving the distinct issues and troubles of Northern Ireland to the sole discretion of a U.K.-wide legislature.

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Debatably after Bloody Sunday, the Catholic population felt cornered into accepting an oppressive and discriminatory ruling government with little, if any, legitimate recourse before the law. Exacerbating tensions, the Westminster Parliament responded to the increasing sectarian violence in Northern Ireland with the passage of emergency legislation that radically altered the criminal process and the role of defense counsel.<sup>12</sup> Emergency legislation had disproportionate consequences for the Catholic

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<sup>7</sup> Id.

<sup>8</sup> "Political" in this regard refers to those who were active in organizations such as the IRA, Sinn Féin, and other violent and non-violent political groups. "Civilian" refers to those who had no distinct political affiliation, including children.

<sup>9</sup> Bloody Sunday happened on Sunday January 30, 1972 in Derry/Londonderry when British Security forces opened fire on unarmed civil rights demonstrators, killing thirteen and wounding fourteen others. An estimated 15,000-20,000 protestors were in attendance, as well as 1,800 British soldiers. The march was to take place within a nationalist area of town known as "Free Derry Corner," an area of the city that was effectively policed by the IRA rather than the RUC. Although the area was noted for its resistance, there is no evidence that republican paramilitary weapons were present on that day. A small portion of around 200 people dropped behind the march at William Street to stone the British soldiers behind the barricades there. Stoning soldiers was not uncommon, especially at this intersection, and was not a major incident on that day. Security forces initially attempted to stop the splinter demonstration with the use of water cannons and rubber bullets, a common method employed at the time to disperse crowds in Northern Ireland, but forces had been authorized to use live bullets on the demonstrators if necessary. Three of the thirteen shot dead were under the age of 18, and nine were reportedly shot as they either ran for cover or to the assistance of the other wounded. See generally BILL ROLSTON, UNFINISHED BUSINESS: STATE KILLINGS AND THE QUEST FOR TRUTH (1<sup>st</sup> ed. 2000).

<sup>10</sup> The right to life is enumerated in the Convention for the Protection of Human Rights and Fundamental Freedoms under Article 2. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 2, 213 U.N.T.S. 221 [hereinafter ECHR]. The United Kingdom signed the Convention in 1950.

<sup>11</sup> Kara E. Irwin, Prospects for Justice: the Procedural Aspect of the Right to Life Under the European Convention Human Rights and Its Application to Investigations of Northern Ireland's Bloody Sunday, 22 FORDHAM INT'L L.J. 1822, 1823 (1999).

<sup>12</sup> The emergency legislation included the Emergency Provisions Acts (EPA) of 1973, 1975, 1978, 1987 and 1991 and the Prevention of Terrorism Acts (PTA) of 1974, 1976, 1984, and 1989. While the EPA applied only to Northern Ireland, the PTA applied in the whole of the United Kingdom. Martin Flaherty, *Human Rights Violations Against Defense Lawyers: The Case of Northern Ireland*, 7 HARV. HUM. RTS. J.

population, who typically were the objects of criminal proceedings rather than their Protestant neighbors. With Catholics under complete civil and political oppression, a cycle of violence emerged in which Catholics and Protestants each turned to extreme paramilitary groups to further their political goals and retaliate against violence with the use of more violence.<sup>13</sup> The legacy of Bloody Sunday ushered in the most deadly era of the Troubles, lasting until the Good Friday Agreement twenty-six years later.

### C. Human Cost

¶7 Out of a population of only 1.5 million, the death toll from the Troubles is estimated at 3,700, accounting for Protestant and Catholic, civilian and political, adult and children alike. What is especially alarming is that a comparatively large number of these deaths involved, either directly or indirectly, the participation and endorsement of state agents acting under the authority of the Royal Ulster Constabulary (or RUC, the police force in Northern Ireland), the British Army, and other British security forces such as the Special Air Services (SAS).<sup>14</sup>

¶8 Emergency and other legislation allowed deaths at the hands of the state to go uninvestigated and largely unpunished under the guise of national security interests. Even today, the British government denies accountability for the loss of the lives of citizens killed by state agents, even those killed who were unarmed.<sup>15</sup> Injustice and the lack of state accountability has taken an enormous psychological toll on the families of victims of human rights abuses and, to date, crimes by the British government and security forces have largely gone unresolved in Northern Ireland's courts.

## III. STRUCTURES LEADING TO HUMAN RIGHTS ABUSES PRIOR TO 1998: EMERGENCY PROVISIONS ACT, GOVERNMENT COLLUSION, AND CORRUPT INQUIRY PROCEDURES

### A. *The Emergency Provisions Act and the Intimidation of Human Rights Attorneys*

¶9 After Bloody Sunday and in response to escalating violence, the British government abolished any local governance in Northern Ireland and instituted two legislative acts that greatly diminished the few procedural protections available to its citizens. First was the Emergency Provisions Act of 1973, which applied exclusively inside Northern Ireland. Second was the Prevention of Terrorism Act of 1974, which applied to the whole of the United Kingdom. Together these Acts established a system designed to obtain confessions during extended periods of detention without criminal charge or access to counsel<sup>16</sup> and set the stage for across-the-board denial of due process to a largely Catholic population of victims.

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87, 95 (1994).

<sup>13</sup> Paramilitary violence accounts for an estimated 2,300 victims between 1973 and 2001, including shootings, knee cappings, beatings and torture. See generally KIERAN MCEVOY, HUMAN RIGHTS, EQUALITY AND DEMOCRATIC RENEWAL IN NORTHERN IRELAND (Colin J. Harvey ed. 2001).

<sup>14</sup> One estimate is that security forces have been directly responsible for approximately 360 deaths, with the RUC being responsible for at least fifty of those deaths. Hirsch, *supra* note 6, at 1295. The actual number—considering more controversial deaths—is likely to be significantly higher.

<sup>15</sup> Civilian deaths account for an estimated two-thirds of the total death toll during the Troubles, both at the hands of State actors and loyalist and republican paramilitaries. Christine Bell, *Dealing with the Past in Northern Ireland*, 26 FORDHAM INT'L L.J. 1095, 1127 (2003).

<sup>16</sup> Flaherty, *supra* note 12, at 95.

## 1. The Emergency Provisions Act and the Prevention of Terrorism Act

¶10 The Prevention of Terrorism Act (hereinafter, the PTA) was passed by Westminster Parliament in 1974 in response to two bomb attacks in Birmingham, England, which killed twenty-one people.<sup>17</sup> The PTA enabled authorities to proscribe military (and paramilitary) organizations and to prohibit membership in them, to issue orders allowing citizens of the United Kingdom from all of Northern Ireland, England, Wales, and Scotland to be held without trial or judicial review; and, most prejudicially, to arrest, detain and interrogate individuals for up to seven days without an appearance before a magistrate.<sup>18</sup> While originally envisioned as temporary, it lasted until the Good Friday Agreement called for the cessation of its operation in 1998.<sup>19</sup>

¶11 The Emergency Provisions Act (hereinafter, the EPA) was passed by Westminster Parliament one year prior to the PTA, in 1973. The EPA was a remnant of the emergency legislation pervasive in Northern Ireland since its partition in 1921, and the Act retained many of the antiquated features.<sup>20</sup> Primarily, and in contravention of the 1950 European Convention on Human Rights, the EPA permitted police and other security forces inside Northern Ireland to stop and question individuals about their identity and recent movements, to search persons and residences, and to examine and seize documents—all without prior judicial notice or order.<sup>21</sup> The EPA was also used to justify frequent raids of Catholic homes and the search and seizure of personal items from both private residences and vehicles. The EPA's repercussions, however, extended beyond the abridging of civil rights, and emergency legislation became an influential contributor to the systematic harassment and conspired murders of selected persons.

## 2. The EPA and a Program of Harassment

¶12 The EPA was frequently invoked by the RUC to search Catholic citizens and their homes and vehicles. It was also used as a basis for seizing personal items and for compelling the disclosure of private information about their lives. Citizens were often coerced under emergency legislation and at gunpoint to provide details about activities and acquaintances.<sup>22</sup> Repeated harassment in public created widespread public suspicion, fear and rumors, as well as contributed to the practice of paramilitary forces eliminating suspected IRA members. While continued interrogations alone did not suggest that those harassed by police forces suffered anything more than inconvenience, those persons most regularly and publicly harassed often became targets for murder by ever-watching loyalist paramilitaries. Moreover, not only did routine interrogation of an individual publicly mark them as an assumed paramilitary actor, interrogation could result in the compilation of copious details regarding a person's identity, social associations, and activities. Such details were kept in official police files and passed on to top British

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<sup>17</sup> *Id.* at 96.

<sup>18</sup> Recital of the PTA's provisions is taken from Flaherty, *supra* note 12, at 96.

<sup>19</sup> Good Friday Agreement's Strand Three, Security, ¶ 2(iii). Agreement Reached in Multi-Party Negotiations, Apr. 10, 1998, Ir.-U.K., 37 I.L.M. 751 (1998).

<sup>20</sup> The previous legislation was called the Civil Authorities (Special Powers) Act of 1933. Flaherty, *supra* note 12, at 96.

<sup>21</sup> *Id.*

<sup>22</sup> Relatives for Justice, *Collusion*, available at <http://www.relativesforjustice.com/collusion/introduction.htm>.

Intelligence Agents who simultaneously held prominent positions in loyalist paramilitary groups.<sup>23</sup> Such files kept on civilian targets conveniently disappeared from the back of police vehicles or otherwise “leaked” to loyalist paramilitaries. The subjects of these files were frequently murdered by loyalist gangs.<sup>24</sup> The harassment of both suspected IRA and Sinn Féin actors as well as innocent individuals was, without a doubt, a devious tactic used under the legal auspices of the EPA and an emergency regime to intentionally expose persons to a heightened threat of danger from loyalist paramilitaries.

*B. State Collusion, the Role of Human Rights Attorneys in an Emergency Regime and the Case of Pat Finucane*

¶13 The Emergency Provisions Act’s empowerment of local police—allowing them to act on their own fears and hate—contributed to the intimidation and killing of human rights attorneys as well as Catholic subjects. Defense lawyers necessarily advocated for the protection of defendants in face of the abrogation of procedural rights prevalent under emergency regimes, advised them against self-incrimination, and protected them from mistreatment during their internment. Solicitors’ access to clients and exculpatory evidence was often obstructed by official measures and unofficial intimidation. Due to the psychological alignment of these lawyers with the alleged crimes of their clients, attitudes towards defense attorneys who persisted in advocating for the criminally accused became lumped together with the animosity towards the clients they represented. This grouping resulted in defense attorneys acquiring the same contemptible status and ill-treatment from security forces. The work of defense lawyers, and indeed due process, was effectively repressed in the emergency state.<sup>25</sup> The few defense lawyers who did advocate against the state faced both obstacles to their professional work as well as threats to their personal safety.

¶14 Most notoriously, human rights attorney Pat Finucane was murdered in February 1989 when two masked loyalists burst into his dining room, and peppered him with bullets in front of his wife and children. Repeated allegations of official collusion were raised in his murder: Finucane, like many Catholic civilians and republicans alike, was a chosen target of loyalist paramilitaries working closely under the intelligence and

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<sup>23</sup> Brian Nelson was an agent of the Force Research Unit (FRU), the most secret and elite division of British Military Intelligence, while simultaneously the Ulster Defense Army’s (UDA) Intelligence Chief. The UDA was one of the most active and violent loyalist paramilitaries, along with the Ulster Freedom Fighters. Formerly, he was a British army soldier and member of the UDA until he was criminally sentenced and imprisoned for the sectarian kidnapping of a partially sighted Catholic woman who later was tortured with electric shocks. Upon release he joined British Intelligence, who soon orchestrated his readmission into the UDA. Most notoriously, Nelson was principally involved in the procurement of weapons from a South African arms company and the weapons’ subsequent distribution into the murderous hands of loyalist gangs. Relatives for Justice, *Nelson and the South African Arms*, available at <http://www.relativesforjustice.com/collusion/nelson.htm>.

<sup>24</sup> Leaking of files and other intelligence, including of photos and detailed information on the residence and movement patterns of suspected IRA members, by British security forces to loyalist paramilitaries was a known government tactic to suppress republican violence and resistance.

<sup>25</sup> Solicitors attempted to lodge complaints about the systematic interference and personal risks encountered in their practice, but had little faith that the RUC would adequately and impartially handle these complaints. Eventually, uniform skepticism as to the complaint procedures and the availability of effective redress deterred lawyers from filing complaints, and they continued their work in spite of the professional difficulties and personal hazards. Flaherty, *supra* note 12, at 102-103.

direction of local security forces including the British Army and the RUC.<sup>26</sup> Legitimate reasons founded these allegations, as several of Finucane's republican clients were informed upon interrogation by police that their high-profile solicitor would be removed before long. Additionally on the day of his murder, RUC roadblocks that had been in place all afternoon were inexplicably removed within the hour of his murder, allowing the gunmen to escape quickly from the area.<sup>27</sup> Since his murder, two British officers have exposed the collusion and admitted that, in fact, the British army participated in the UDA murder plot to kill Finucane.

¶15 The legacy of police intimidation of human rights attorneys continued even after the enactment of the Good Friday Agreement and the dismantling of the emergency laws. In March 1999, a loyalist paramilitary car bomb killed human rights lawyer Rosemary Nelson, who, like Pat Finucane, had been subjected to intimidation and harassment by the RUC and whose family was effectively denied redress for her murder after an inquest.<sup>28</sup> However, the murder of Rosemary Nelson, occurring soon after passage of the Good Friday Agreement, bequeathed the legacy of abusive conditions faced by human rights lawyers onto post-conflict Northern Ireland. Ultimately, international disrepute brought on by the deficient investigations into the murders of Pat Finucane and Rosemary Nelson was the impetus for the Terrorism Act of 2000,<sup>29</sup> which eventually replaced emergency legislation in regard to political violence and was arguably a step forward for protecting defense lawyers in Northern Ireland.

#### IV. THE GOOD FRIDAY AGREEMENT: A NEW CONSTITUTIONALISM AND GUARANTEES OF CIVIL AND HUMAN RIGHTS

##### A. *The Agreement's Negotiation and Contributing International Influences*

¶16 The Agreement Reached in Multi-Party Negotiations,<sup>30</sup> otherwise known as the Belfast Agreement, or Good Friday Agreement, was concluded after almost two years of extensive negotiations. Both the British and Irish governments participated in the effort

<sup>26</sup> The recount of Finucane's death is taken from SEAN MCPHILEMY, *THE COMMITTEE* 56 (2d ed. 1999).

<sup>27</sup> Both examples taken from McPhilemy, *supra* note 26, at 56. The use of roadblocks was and still is a common practice in Belfast to control the movements of Catholic residents. Given that Catholic West and North Belfast are areas where each isolated neighborhood typically has one way in and one way out (also the favored city planning of the Nazi regime and in apartheid South Africa), the roadblocks often quarantined Catholics inside their neighborhoods for days on end. Closed gates were deadly to some Catholic residents whose traffic was diverted at roundabouts directly into loyalist areas, often to awaiting paramilitaries. Suspicions that roadblocks were tools of police collusion with loyalist assassins ultimately arose after several instances when roadblocks would spontaneously be removed coinciding with loyalist attacks in West Belfast, and suspects would quickly escape through the newly opened roads into East Belfast. The gates of West and North Belfast are still used to close off areas of the city, especially during the week of July 12<sup>th</sup> and the Marching Season, when unionists and loyalists celebrate British rule of Northern Ireland by parading and burning the tricolor flag of Ireland along the borders of Catholic neighborhoods.

<sup>28</sup> Calling for an independent judicial inquiry into the killing, human rights organizations cited Rosemary Nelson's earlier instances of police intimidation. In January 2000, the director of public prosecutions decided not to criminally prosecute the police officers that harassed Rosemary Nelson prior to her death. In May of 2000, the Independent Commission for Police Complaints (ICPC) decided not to take disciplinary action against any of the officers, and to date no person has ever been charged with her death.

<sup>29</sup> Human Rights Watch, *Human Rights Developments for Northern Ireland* (2000), available at <http://www.hrw.org/wr2k1/europe/uk.html>.

<sup>30</sup> Good Friday Agreement, *supra* note 19.



as well as eight of Northern Ireland's political parties, all of whom were under the independent chairmanship of three foreign experts.<sup>31</sup> The Good Friday Agreement and the Northern Ireland Acts that implemented its provisions simultaneously provide for a new form of British constitutionalism based on international influences and respect for human rights while also containing potentially fatal restrictions on the functioning of the very government that it creates.

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It is imperative in a discussion of the Good Friday Agreement to note the Irish Constitution of 1923 in two regards. First, the original text of the Irish Constitution claimed as part of its national territory the six counties of what is now Northern Ireland,<sup>32</sup> thereby evoking a historical array of jurisdictional issues in contradiction to the United Kingdom's claim over the territory. Unionists largely viewed this aspect of the Irish Constitution as having overtly hostile intent towards British rule in that it was drawn upon to encourage and justify extremists' campaigns of sectarian violence. This aspect of the Irish Constitution considerably ignited loyalist hostilities against Irish republicanism and justified their own violent actions taken against Catholic civilians and paramilitaries alike. Second, the Irish Constitution lent its constitutional framework to the Good Friday Agreement of 1998, whereby the Agreement would be distinct from other failed peacekeeping accords given it now asserted the Irish constitutional notions of sovereignty of the people and a commitment to human rights.<sup>33</sup> The Irish Constitution arguably is a necessary inclusion in any lasting peace accord in Northern Ireland given the cultural identity of the Catholic population and their psychological need for an official recognition of their Irish nationality. The Good Friday Agreement, unlike prior peace accords, acknowledged the importance of incorporating the Irish Constitution for both its practicality and psychological appeasement as well as for its formal dedication to human rights.

### *B. The New Constitutional Architecture of the Good Friday Agreement*

#### 1. Traditional Constitutional Reform in the U.K.

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Constitutional reform in the United Kingdom is traditionally viewed as an incremental process whereby informal changes are made to a formal institutional structure.<sup>34</sup> That is to say, the United Kingdom has no single written document or foundations of authority such as the U.S. Constitution or its provisions on the separation of powers; the State has sovereignty, not the people. Moreover, there is no supreme law of the land, and any British constitutional laws are whatever laws Westminster

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<sup>31</sup> David Byrne, *An Irish View of the Northern Ireland Peace Agreement: The Interaction of Law and Politics*, 22 FORDHAM INT'L L.J. 1206, 1207 (1999). The independent overseers were American George Mitchell, Finnish Prime Minister Harri Holkeri, and Canadian General John de Chastelain.

<sup>32</sup> The Irish Constitution has since been amended by the Good Friday Agreement. The original Article 2 defined the national territory as consisting of "the whole island of Ireland, its islands and the territorial seas." Article 3 asserted jurisdiction over the northern six counties in stating that "Pending the re-integration of the national territory... the laws enacted by the parliament shall have the like area and extent of application as the laws of Saorstát Éireann and the like extra-territorial effect." Good Friday Agreement, *supra* note 19.

<sup>33</sup> More on these aspects of the Good Friday Agreement are discussed *infra*.

<sup>34</sup> Kieran McEvoy & John Morison, *Beyond the Constitutional Moment: Law, Transition and Peacemaking in Northern Ireland*, 26 FORDHAM INT'L L.J. 961, 986 (2003).

Parliament informally makes or repeals of its own volition.<sup>35</sup> There are no invariable constitutional rights; there is no Bill of Rights. Parliament's omnipotent power is not ceded in any federal way, to the people, to other institutions, or to a greater foundational document. The Belfast agreement was truly unique in that it was the first written constitutional structure ever in British law-making history.

## 2. Constitutionalism in the Good Friday Agreement

¶19 The Good Friday Agreement has been acclaimed for its "constitutional sophistication" in setting forth four aspects of constitutionalism unprecedented in the United Kingdom<sup>36</sup>: (1) a power-sharing executive; (2) a democratically-elected Assembly and cross-community voting scheme that ensures there will be no domination of the Assembly by either republican or unionist parties; (3) established relations between the jurisdiction and governments of Ireland and the United Kingdom; and (4) a commitment to human rights and equality, including provisions relating to the release of political prisoners, reform of the criminal justice system, the decommissioning of paramilitary weapons, and the enumeration of human rights.<sup>37</sup>

### C. *Effect of the Good Friday Agreement on Civil and Human Rights*

#### 1. Incorporation of the European Convention on Human Rights

¶20 The Good Friday Agreement sets forth a commitment to civil and human rights and equal opportunity. The Agreement affirms eight key civil rights, including the right of free political thought, freedom of expression and religion, right to equal opportunity, and the right to freedom from sectarian harassment.<sup>38</sup> It also requires the British Government to incorporate the European Convention on Human Rights (hereinafter, the ECHR) into Northern Ireland law. While it does not provide an explicit mechanism for redressing past wrongs, due in part to the disregard of these now-recognized rights,<sup>39</sup> the incorporation of the ECHR into Northern Ireland law is an original and formal dedication by the government to the protection and guarantee of its citizens' rights that was ostensibly absent during the Troubles.

¶21 The ECHR broadly bestows basic human rights upon the citizens of Europe. It is of great importance to the families of victims of state killings and shoot-to-kill policies in Northern Ireland in that it provides for the right to life.<sup>40</sup> The ECHR also provides for the right to liberty and security, including the procedural rights to be informed promptly of the reasons for one's arrest and for any charges, to a fair trial within a reasonable time or to release pending trial, and other minimum procedural protections for the criminally

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 962.

<sup>37</sup> The Agreement provides "Executive authority to be discharged on behalf of the Assembly by a First Minister and Deputy First Minister and up to ten Ministers with Departmental responsibilities." Good Friday Agreement, *supra* note 19, at Strand One, ¶ 14.

<sup>38</sup> Good Friday Agreement, *supra* note 19, at Strand Three, Human Rights, ¶ 1.

<sup>39</sup> Except for the provisions regarding the release of prisoners and decommissioning of paramilitary weapons, the Good Friday Agreement neither makes explicit mention of unresolved claims against the State for alleged violations of human rights nor provides a specific institution to address the painful issues of the past.

<sup>40</sup> ECHR, *supra* note 10, at Sec. I, Art. 2.

accused.<sup>41</sup> Finally, it declares social and civil rights, mandating respect for private and family life, freedom of thought, conscience, religion, freedom of expression and a general prohibition on discrimination. As noted by Human Rights Watch, the Good Friday Agreement can be commended for its “understanding of the relationship between the protection and promotion of human rights and the probabilities for a lasting, just and durable peace.”<sup>42</sup> The Good Friday Agreement implicitly acknowledges that any successful peace agreement in Northern Ireland is inextricably linked to human and civil rights.

¶22 The Good Friday Agreement, while not expressly enumerating the rights contained in the ECHR, indicates that the ECHR’s provisions will be safeguarded and that neither the Assembly nor any public body can infringe upon them.<sup>43</sup> Furthermore, Strand Three specifies that the ECHR is to be incorporated into Northern Ireland law and that it is directly enforceable in their courts, which would also then be able to order remedies for breach of the Convention. Under this provision, Northern Ireland’s courts would also have the power to invalidate primary legislation created by the Assembly as well as any future Bill of Rights for Northern Ireland if found to be inconsistent with the ECHR.<sup>44</sup> Finally, and of great importance for the guarantee of human rights in the event that an emergency regime re-emerges, the ECHR provides that no derogation from the right to life is allowed in times of public emergency, except for deaths resulting from lawful acts of war.<sup>45</sup> In absence of a formal Bill of Rights in the United Kingdom, the incorporation of the ECHR into domestic law is a significant advance beyond the U.K. ratification of the Convention in 1951 and signals a newfound commitment to these fundamental human rights contained in the convention’s provisions.

## 2. A Bill of Rights and the Human Rights Commission for Northern Ireland

¶23 The Agreement goes beyond a mere formalized commitment to the ECHR and recognizes that some additional rights are uniquely necessary for the people and distinct circumstances in Northern Ireland. While recognizing the fact that the ECHR’s provisions provide universal rights, the Good Friday Agreement also institutes a system for broad supplementary rights to be created by the newfound Northern Ireland Human Rights Commission (NIHRC).

¶24 The primary duty of the NIHRC is to advise Westminster Parliament in creating auxiliary rights to those in the ECHR, intended “to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem.”<sup>46</sup> The Good Friday Agreement explicitly recognizes the importance of respect for linguistic diversity<sup>47</sup> and sets forth eight specific categories to promote the Irish language in education, film, television, and in the larger community in general.<sup>48</sup> The supplemental rights created by

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<sup>41</sup> *Id.* at Sec. I, Art. 5-7.

<sup>42</sup> Human Rights Watch, *Justice for All? An Analysis of the Human Rights Provisions of the 1998 Northern Ireland Peace Agreement*, available at [http://www.hrw.org/reports98/nireland/#\\_1\\_1](http://www.hrw.org/reports98/nireland/#_1_1).

<sup>43</sup> Good Friday Agreement, *supra* note 19, at Strand One, ¶ 5(b).

<sup>44</sup> *Id.*, at Strand Three, United Kingdom Legislation, ¶ 2.

<sup>45</sup> ECHR, *supra* note 10, at Art. 15(2).

<sup>46</sup> Good Friday Agreement, *supra* note 19, at Strand Three, United Kingdom Legislation, ¶ 4.

<sup>47</sup> *Id.* at Strand Three, Economic, Social and Cultural Issues, ¶ 3.

<sup>48</sup> *Id.* at Strand Three, Economic, Social and Cultural Issues, ¶ 4.

the NIHRC may also include minority rights as well as other economic, social and cultural rights, including security and criminal justice rights. Together with the ECHR, these supplementary rights, once formalized, are intended to comprise a Bill of Rights for Northern Ireland.

3. Commitments for Social Inclusion, Employment Equality Advancement of Women and Other Social Rights

¶25 The Good Friday Agreement contains several key provisions with regard to areas of integrated education and housing, the advancement of women, and equal employment opportunity. The accord's language provides for only broad policies in these regards, merely pledging for "rapid progress" in equalizing the historic legacy of discrimination against the Catholic minority population in education, housing, and employment.<sup>49</sup> While the enumeration of Irish language rights and promotion is comparatively extensive, other important social obligations are limited to such ambiguous language and minimal commitments as "tackling the problems of a divided society and social cohesion"<sup>50</sup> and ensuring the "full and equal political participation" of women.<sup>51</sup> The government also vaguely promises to extend and strengthen anti-discrimination legislation, to review national security aspects of present fair employment legislation, and to create a range of measures aimed at combating unemployment and progressively eliminating the differential in unemployment rates between the two communities.<sup>52</sup>

¶26 However broadly defined, the government's formal observance of the social inequities borne by generations of civil conflict is a significant movement forward in redressing these deeply rooted societal problems. Yet this progress is undermined by the continued existence of legislation legitimizing otherwise discriminatory policies, particularly in regard to employment equality. The Fair Employment Act of 1989 remains law in Northern Ireland and empowers employers to deny employment to persons if they merely suspect the applicant's involvement in illegal organizations and groups.<sup>53</sup> This type of ill-treatment of persons based on any level of reasonable or unreasonable suspicion and prejudice is an obsolete practice of endorsed discrimination that needs to be broken immediately. The extent of the government's observance of these general commitments will only be apparent when the vast disparity in unemployment rates and other manifestations of social inequity are finally closed.

V. SHORTCOMINGS OF THE GOOD FRIDAY AGREEMENT AND RECOMMENDED ACTION

A. *The Good Friday Agreement Affirms the Same Devolved Government That Previously Contributed to a Political Climate Where Abuses Flourished*

¶27 The Good Friday Agreement has two fundamental flaws: (1) it merely reaffirms the same devolved governmental structure that resulted in a climate where the abrogation of civil and human rights flourished: Instead of giving the people of Northern Ireland full

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<sup>49</sup> Human Rights Watch, *supra* note 42.

<sup>50</sup> Good Friday Agreement, *supra* note 19, at Strand Three, Economic, Social and Cultural Issues, ¶ 2(i).

<sup>51</sup> *Id.* at Strand Three, Human Rights, ¶ 1.

<sup>52</sup> *Id.* at Strand Three, Economic, Social and Cultural Issues, ¶ 2(iii).

<sup>53</sup> Human Rights Watch, *supra* note 42.

legislative autonomy or a greater voice in Westminster Parliament, the local Assembly still has only a limited scope of legislative authority; (2) the Northern Ireland Act of 2000 provides for suspension of an already devolved form of government in that the British Prime Minister, acting through the Secretary of State for Northern Ireland, may suspend the Assembly and thereby prevent its meeting or passage of laws as well as suspend the operation of the North-South Ministerial Council, British-Irish Council, and the British-Irish Intergovernmental Conference established under the Good Friday Agreement. These two flaws together thereby withhold from the people of Northern Ireland a comprehensive guarantee of a protective and democratic voice in their ruling politics.

¶28 Essentially, the Good Friday Agreement establishes yet another form of devolved government within the United Kingdom, which is problematic for the success of the Agreement in two regards. First, the republican community has historically renounced British rule and while elected representatives may take their seats on the local parliament (or “Assembly” as it now is called), most will not occupy their elected seats in the Westminster Parliament.<sup>54</sup> Using the law to resist the law evolved during the war into an effective alternative to furthering Irish republicanism without the use of violence. Second, the unique issues and demands of the citizens of Northern Ireland are not adequately addressed due to their marginal representation in Westminster Parliament.<sup>55</sup>

¶29 In context of the United Kingdom’s overall structure, the similarly devolved governments in Scotland and Wales have not met with the challenges of Northern Ireland’s parliamentary structure either under the Good Friday Agreement or during the prior parliamentary structure. In Scotland and Wales, the political parties are generally loyal to Westminster and aligned with the notion of its parliamentary sovereignty. Moreover, the Scottish and Welsh parliaments have not been subject to the extreme diverging politics of Northern Ireland: citizens of Scotland and Wales typically do not renounce British control and there is not a modern history of violent civil war. The devolved government in Northern Ireland is a unique flaw in the otherwise operable British system of decentralized governments within its regional sphere of power.

¶30 The foremost obstruction to true democracy in Northern Ireland under the Good Friday Agreement is the provision that allows the British government to suspend operation of Northern Ireland’s Assembly. The Northern Ireland Act of 2000 explicates the procedure for suspension, allowing for suspension at the discretion of the Secretary of State (usually acting in concert with the British Prime Minister). Northern Ireland’s Assembly has been suspended four times since the signing of the Good Friday Agreement, and currently has been suspended since October 2002.<sup>56</sup> The entirety of

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<sup>54</sup> Sinn Féin representatives elected to the Westminster Parliament typically make use of the facilities and resources available in the British Parliament, but refuse to take either an Oath of Allegiance to the Queen or their seats in the chamber. Gerry Adams, leader of the Sinn Féin party and elected MP to the Westminster Parliament noted that, “as an Irish republican party committed to a united Ireland we do not believe that there is any value in Irish MPs sitting in a British parliament.” Sinn Féin, *Sinn Féin Westminster Election Manifesto* (2001), available at <http://www.sinnfein.ie/gaelic/policies/manifesto/28>.

<sup>55</sup> Of the 659 seats in the House of Commons, 529 are delegated for England, 40 for Wales, 72 for Scotland and 18 for Northern Ireland. The United Kingdom Parliament, *Elections* (2003), available at <http://www.parliament.uk/works/elections.cfm>.

<sup>56</sup> Secretary of State John Reid officially ordered the 2002 suspension via the Northern Ireland Act of 2000. Northern Ireland Act 2000 (Suspension of Devolved Government) Order (2002), available at <http://www.northernireland-legislation.hms.gov.uk/>. The Secretary of State acted in concert with Prime Minister Tony Blair in suspending the Assembly last year, due to when unionist parties walked out of the Assembly, apparently frustrated by weapons decommissioning issues. Rather than a mere weapons dump

Northern Ireland's unique issues and needs are ultimately left exclusively to the legislative whims of Westminster Parliament, of which Northern Ireland's representative voice is eighteen constituencies of 659 total members of Parliament.<sup>57</sup>

*B. Recommendations To Address the Inadequacies of the Human Rights Provisions of the Good Friday Agreement*

1. Internationalizing the Issues: Cooperation with International Institutions and Non-Governmental Organizations To Formalize a Bill of Rights

¶31 The Good Friday Agreement, while itself a product of international influence, neither entirely recognizes nor maintains the vital role that international and legal experts play in pursuing ongoing peace and respect for civil and human rights. International experts and academics provide essential objectivity and seasoned viewpoints to a still-antagonistic political situation. They lend practiced experience to the ambitious pursuits of drafting human rights legislation, a Bill of Rights for Northern Ireland, and new administration on the policing and law in a divided society. As part of their initiative to rebuild Northern Ireland into a post-conflict and human rights-oriented society, the United Kingdom could greatly benefit from the creation of a formal Bill of Rights reflecting the highest international standards of human rights protections.<sup>58</sup> The contribution of international non-governmental organizations and experts in rebuilding post-conflict societies is essential to ensure both the success of that new society and its highest regard for civil and human rights.

¶32 First, international actors offer an objective perspective through which the drafting of new legislation and codes can proceed unhindered by personal predisposition for the underlying issues and immediate actors. Second, international experts on restructuring post-conflict societies, while integrating human rights aspirations, arguably have an evolved sense of what realistically works since they likely have been previously involved in similar missions elsewhere in the world. The involvement of international actors in the drafting of a formal British Bill of Rights is crucial in these regards. The contribution of international experts on human rights and other civil and social issues does not formally endure past the preparatory work in negotiating and drafting the Good Friday Agreement.

¶33 While its creation itself is a significant advance from the prior Standing Advisory Commission on Human Rights, the Northern Ireland Human Rights Commission (NIHRC) is permitted to merely draw upon international instruments and experience without authorizing a more direct international input. Furthermore, the Good Friday Agreement limits membership in the NIHRC to people drawn exclusively from the local community in Northern Ireland. While the importance of community participation is not disputed, the NIHRC has the potential to languish as a device of divergent politics in a society that is still largely divided. Specific and mandatory inclusion of international

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by the IRA, unionist parties demanded an exact count of how many guns and other weapons (such as rocket launchers, etc.) were handed in as well as how those weapons got into IRA hands. While the IRA routinely dumps weapons, say in a forest, and notifies the decommissioning body of the dump, it did not want to surrender this specific information in addition to the weapons. Weapons decommissioning is one of the most controversial and complex issues in Northern Ireland at the moment and is the reason why the Assembly established under the Good Friday Agreement is currently suspended.

<sup>57</sup> The United Kingdom Parliament, *supra* note 7.

<sup>58</sup> Human Rights Watch, *supra* note 42.

actors in this regard would be an impressive assurance against potential political impasses that could encumber the success of the NIHRC (especially in its yet formative years) as well as stunt the full realization of its new civil and human rights commitments.

## 2. The Government Must Make Unconditional Progress Towards the Complete Dismantling of an Emergency Regime

¶34 Improvements in the policing of Northern Ireland have been and currently remain a central issue to maintaining the peace and amicable relations between the divided populations. The emergency regime of the past set the stage for numerous violations of human rights and subjugation of a minority population only to be replaced now by the U.K.-wide Prevention of Terrorism Act, which affords the security forces even greater powers than under the prior EPA.<sup>59</sup> The Good Friday Agreement, while aspiring for the normalization of security arrangements, predicates changes in security operations on “the development of a peaceful environment.”<sup>60</sup> This is to say that its provisions regarding the reduction of armed forces in Northern Ireland, the removal of security installations, and indeed the removal emergency powers, are all contingent on a general decline in the overall level of threat.

¶35 The circular logic employed in this regard does not provide for an adequate guarantee that the same emergency regime that exacerbated the bloody civil war in Northern Ireland will not be re-instituted should the government deem that the threat so requires. Essentially, the disbanding of emergency laws which now take the form of the Prevention of Terrorism Act will only transpire when the society in Northern Ireland naturally calms. This bottom-up approach to normalizing extreme security measures is reprehensibly insufficient to provoke real change in the climate of violence in Northern Ireland.

¶36 Furthermore, while the accord establishes a new and independent Commission on Policing in Northern Ireland, policing concerns are subject to the potentially lengthy delays of the Commission’s processes. Therefore, otherwise urgent protections could be postponed inside the workings of this nascent Commission. Rather, the government needs to reassess their current emergency provisions and the distinct impact they have on Northern Ireland. Of urgent security concern should be the address of repeated allegations of police mistreatment of detainees, the judicial independence of Northern Ireland’s courts, and ensuring impartial and non-harmful security conduct during the marching season where sectarian hostilities and the use of force typically and simultaneously erupt.<sup>61</sup>

## 3. The United Kingdom Must Repudiate Their Derogation to Article 6 of the European Convention on Human Rights

¶37 The Good Friday Agreement requires that the British Government incorporate the 1950 European Convention for the Protection of Human Rights and Fundamental

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<sup>59</sup> *Id.*

<sup>60</sup> Good Friday Agreement, *supra* note 19, at Strand Three, Security, ¶ 1; Human Rights Watch, *supra* note 42.

<sup>61</sup> Human Rights Watch, *supra* note 42.

Freedoms (ECHR) in Northern Irish law.<sup>62</sup> The United Kingdom currently maintains a derogation from Article 6 of the Convention, which guarantees the right of detainees to a fair and public hearing before a judge within a reasonable period of time.<sup>63</sup> The European Court of Human Rights has specified that any detention beyond 4.6 days without presentation before a judge is a violation of fair trial standards set under the ECHR.<sup>64</sup> As a result of their derogation, the United Kingdom defers to its emergency powers to detain a person for up to seven days without charge in Northern Ireland.<sup>65</sup>

¶38 Incorporation of the Good Friday Agreement's provisions on human rights, as explicitly required under the Agreement's provisions, is seriously undermined by the United Kingdom's continuing derogation from Article 6 of the ECHR.<sup>66</sup> Derogations from obligations under the Convention are only to be made "in time of war or other public emergency threatening the life of the nation" and only "to the extent strictly required by the exigencies of the situation."<sup>67</sup> While the current seven-day limit on detention without charge is a beneficial departure from the prior limitless detention contained in previous Emergency Powers Acts, its existence nevertheless contravenes both the ECHR and the Good Friday Agreement. Arguably, changed circumstances since the initial derogation disqualifies Northern Ireland as in time of war or other public emergency. Preserving the Article 6 derogation simultaneously ignores the importance of having an international standard for detaining persons without charge and enfeebles the Good Friday Agreement's procedural protections during a crucial adolescent stage. The Article 6 derogation should be immediately withdrawn so that the ECHR can be fully incorporated into Northern Ireland law, thereby breathing life into the Good Friday Agreement's safeguards for human rights.

#### 4. Protections of Lawyers Must Be Formally and Explicitly Recognized Amongst Supplementary Human Rights

¶39 The Good Friday Agreement makes no direct mention of protections for lawyers as recognized under international law. The harried and perilous practice of defense and human rights attorneys in Northern Ireland continues to cause a rift in procedural due process in Northern Ireland and therefore gives rise to the need for formal protections. Because the hazards faced by human rights attorneys remain very real, as evidenced by the murder of Rosemary Nelson in 1999, the Good Friday Agreement should have made explicit reference to the moral commitments made by both the governments of the United Kingdom and the Republic of Ireland in respect to the protection of lawyers.

¶40 Although the 1948 Universal Declaration of Human Rights did not specifically contemplate protections for lawyers and other law officials upholding human rights standards, it became discernible later when the Eighth United Nations Congress on the Prevention of Crime adopted the Basic Principles on the Role of Lawyers in 1990.<sup>68</sup> In

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<sup>62</sup> Good Friday Agreement, *supra* note 19, at Strand Three, ¶ 2.

<sup>63</sup> ECHR, *supra* note 10, noting that the United Kingdom ratified the ECHR on 11 April 1951, and the Convention entered into force in March of 1953).

<sup>64</sup> Human Rights Watch, *supra* note 42.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> ECHR, *supra* note 10, at Art. 15(1).

<sup>68</sup> United Nations, *Basic Principles on the Role of Lawyers* (1990), available at



addition to specifying a wide range of provisions on the performance of legal counsel, such as one's right to access legal services without regard to race, sex, or class and the duty of lawyers to protect their clients, the Basic Principles also placed an affirmative duty on governments to ensure that legal practitioners do not suffer personally as the result of discharging their duties.<sup>69</sup> The Basic Principles strongly support the argument that governments should assume more responsibility in the protection of lawyers, especially those lawyers who undertake controversial cases and advocate for suspected paramilitary actors.

¶41 The Good Friday Agreement certainly can be commended for recognizing the centrality of new policing and justice arrangements, yet the Agreement's language is ambiguous as to how the new commitments to human rights and impartial justice will effect defense lawyers. Nowhere amongst the listed basic procedural rights is there mention of the right to counsel. And, while the Good Friday Agreement does incorporate ECHR provisions as applicable to all persons including lawyers, the right to counsel and the specific rights of counsel are missing from its terms. The protection of lawyers should be included amongst the supplemental human rights drafted under the auspices of the NIHRC.

## VI. CONCLUSION

¶42 The civil war in Northern Ireland, known as the Troubles, was prompted by a failure of the northern six counties of Ireland to gain independence alongside the Republic of Ireland in 1921. However, it was the failure of the civil rights movement in Northern Ireland and the imposition of emergency laws fifty years later that ignited the politically-divided community into a full-blown civil war.

¶43 Fueled by religious hatred, segregation, and heavy-handed direct British rule, paramilitary groups on both sides of the conflict controlled the future of Northern Ireland and its bloody conflict. Only recently, international and community actors alike came together to attempt yet another peace accord. The resulting product, the Good Friday Agreement of 1998, was innovative in incorporating civil and human rights provisions as well as improved arrangements for the policing and security forces which had exacerbated hostilities during the conflict. The success and durability of the Good Friday Agreement thus far is an attestation to its fundamental inclusion of civil and human rights.

¶44 While the Good Friday Agreement ended the civil war and was a remarkable progress in both the United Kingdom's constitutional structure and formal recognition of human rights, it leaves key issues and urgent needs without redress. Most importantly, the Good Friday Agreement provides for only general and broad commitments to human rights and does not guarantee an increased democratic voice for the unique population of Northern Ireland. Therefore, the people of Northern Ireland are in many ways still subjected to the same oppressive regime and potential for political and social instability that lead them to negotiate this ground-breaking peace accord.

¶45 However, realized social and political changes will largely determine the enduring success of the Good Friday Agreement. The Agreement's operative shortcomings can be

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[http://www.unhchr.ch/html/menu3/b/h\\_comp44.htm](http://www.unhchr.ch/html/menu3/b/h_comp44.htm)

<sup>69</sup> Flaherty, *supra* note 12, at 91.

resolved by continued legislation in the areas of social integration and respect for cultural and religious differences so long as the government maintains only the highest regard for civil and human rights of all its people. The United Kingdom, due in large part to the struggle in Northern Ireland, is ripe for change and its first formalized Bill of Rights. Ultimately, however, lasting and durable peace in Northern Ireland is largely contingent on the varying political parties' commitment to its workings and the population's genuine enthusiasm to bring their society into a new era of respect, equality, and diversity after years of painful struggle and wide-ranging oppression.