

What role could the UK Parliament play (within the terms of the Good Friday Agreement) to advance human rights obligations in Northern Ireland?

CAJ Discussion Note, February 2018

1. Following the ending of the recent SF-DUP negotiations by the latter there has been inconclusive discussion as to the governance arrangements for NI in the absence of an agreement to restore devolution. Previous periods of suspension led to direct rule (although there is no provision for this in the Good Friday Agreement-GFA) and regular meetings of the British-Irish Intergovernmental Conference.¹ Further to the St Andrews Agreement however a UK-Ireland joint implementation statement was issued in April 2006 that announced the power to suspend the Assembly (for direct rule) would lapse permanently on the resumption of power sharing. The two States also took the position that that if the restoration of institutions was deferred governance would be taken forward by new 'British-Irish partnership arrangements' under the 'joint stewardship' of the two governments, on which 'detailed work' was being instigated.² As devolution was restored at this point these arrangements were never clarified or put into place. At present beyond a 'period of reflection' the current UK Government appears not to have any plan as to what to do next regarding governance arrangements.
2. In these circumstances the UK *Parliament* could take the initiative on a number of issues, with or without the explicit support of the UK *Government*. Without taking on the issue of *governance arrangements* for NI the UK Parliament could in the intervening period (in a manner entirely within and

¹ The British Irish Intergovernmental Conference was established under Article 2(iv) of the British-Irish Agreement 1998 – its role is set out under Strand 3 of the Multi Party Agreement. This states that "In recognition of the Irish Government's special interest in Northern Ireland ...there will be regular and frequent meetings of the Conference concerned with non-devolved Northern Ireland matters." The Conference cannot override the GFA but does also have a specific remit to keep under review the workings of the British-Irish Agreement "and the machinery and institutions established under it". A list of meetings until 2007 can be viewed at: <http://cain.ulst.ac.uk/issues/politics/conference/>
² http://news.bbc.co.uk/1/hi/uk_politics/4883600.stm

compatible with the framework of the GFA) progress a number of rights-based obligations that in themselves would resolve matters which have not been agreed through negotiations. This is in reference to unfulfilled human rights commitments constituting *international obligations* on the State party. Whilst such commitments could be discharged through the devolved power, where they are not they continue to be obligations ultimately vested in the responsibility of the State party, and hence the UK Executive and Parliament. These obligations need to be accurately understood as pertaining to existing duties relating to the UK Parliament under the GFA that would exist regardless of whether the devolved institutions are in place. Westminster is not expected to legislate on *any* issue but rather to fulfil international obligations.³

3. The duties in question are in Paragraph 33 of Strand 1 of the GFA which sets out the role of Westminster, stating that (in addition to legislating for non-devolved matters and the scrutiny role of select committees) **the UK Parliament ‘will’:**

“legislate as necessary to ensure the United Kingdom’s international obligations are met in respect of Northern Ireland; (33(b))”

4. ‘International Obligations’ are defined under s98 of the Northern Ireland Act (NIA) 1998 as any international obligations of the UK (other than EU law or Convention rights which are provided for separately under the NIA). As such international obligations include compliance with the human rights treaties ratified by the UK in the UN and Council of Europe Human Rights systems, and the bilateral (UK-Ireland) Treaties and Agreements that make up the peace settlement, including the British-Irish and St Andrews Agreements.⁴

³ Nationalists are concerned that any initiatives in Westminster could essentially usher in direct rule by stealth; the above provisions however do not relate to direct rule, but existing safeguards in the GFA. The DUP whilst advocating direct rule, do not want a direct rule administration to implement cited rights based provisions, arguing this interferes with the devolution settlement. However international obligations are the sole cited exception in the GFA where Westminster is to legislate, when necessary, on devolved matters.

⁴ There are also powers under s26 of the NIA vested in the Secretary of State to direct NI Ministers and departments to take action to fulfil, or refrain from taking action that is not compatible with international obligations. In practice despite numerous unfulfilled human rights treaty obligations these powers have not been used to ensure such compliance.

5. The UK Parliament in 2007 intervened to legislate on behalf of the Northern Ireland Assembly to transpose the EU Gender directive (2004/113/EC).⁵ This was in a context when the then First Minister, Ian Paisley, reportedly wrote to an Assembly Committee to state he was ‘not agreeable’ due to ‘the explicit inclusion of reference to transgender or gender reassignment in the regulations’.⁶ It is therefore the case that there is not only a power but a duty on the UK Parliament to legislate where necessary to meet international obligations, and an example of it doing so. Provided Westminster sticks to such areas, in doing so it is not trespassing on the devolution settlement.
6. The types of international obligations in question would include progressing legislation for the **Northern Ireland Bill of Rights** in line with the provisions of the GFA. This also engages the UK’s international human rights obligations, having been called for to ensure compliance with UN treaties. Parliament could legislate for a process, and ultimately the Bill of Rights itself in accordance with the GFA. The Bill of Rights was, of course, always projected to be enshrined in Westminster legislation.
7. The Bill of Rights could deal with a number of long standing issues in recent negotiations. In addition to matters set out in the 2008 advice on the content of a Bill of Rights by the Northern Ireland Human Rights Commission a Bill of Rights in 2018 could also deal with the issue of **Equal Marriage** and enshrine further rights in the context of **BREXIT**, for example on **Freedom of Movement**.⁷
8. The UK Parliament could legislate for the St Andrews Agreement commitment to the **Irish Language Act** (this was the original commitment – save that the UK government was to introduce the bill to Parliament). This also engages other UN and Council of Europe treaty based requirements.

⁵ Through The Sex Discrimination (Amendment of Legislation) Regulations 2008. For further information, see: Decision Notice Freedom of Information Act 2000 (Section 50) Reference: FS50216279 Date: 24 June 2010.

⁶ Whilst gender reassignment is a different matter to sexual orientation, a DUP colleague on the Committee, Stephen Moutray, reportedly stated their concern was that ‘Bible-believing Christians would be put in a position where they could have to take part in ceremonies at gay weddings, or if they were a guesthouse owner, they would have to give a double room to two gay men.’ *Paisley and McGuinness disagree over gay rights* PINK NEWS 13 December 2007

⁷ For a paper further exploring these issues see: <https://caj.org.uk/2017/03/15/s461-many-current-negotiation-issues-dealt-ni-bill-rights/>

9. The UK Parliament could also legislate to **liberalise NI Abortion law**, in light (among other rulings) of the recent decision by the UN Committee for the Elimination of All forms of Discrimination Against Women (CEDAW) that current NI law is incompatible with duties under CEDAW.⁸
10. The UK has a number of **unfulfilled international obligations under Article 2 ECHR to deal with the past in Northern Ireland**, and similar obligations under the UN International Covenant on Civil and Political Rights (ICCPR). It is possible Parliament could vote to release outstanding monies for legacy inquests and the Police Ombudsman, and take forward the legacy architecture agreed under the Stormont House Agreement. Again, it has already been agreed that legislation to implement the Stormont House Agreement would be passed at Westminster.
11. There is potential for such matters to be raised in Parliament through motions but also progressed through one or more Private Members Bills given the support in Parliament for marriage equality, abortion law reform and the Agreements of the peace settlement.

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⁸ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22693&LangID=E>