

Foreword

This submission draws on comparative research from the Political Settlements Research Programme, and the research of the contributors.

The [Political Settlements Research Programme](#) (PSRP) is a six-year research programme exploring how political settlements can be made both more resilient, and more inclusive of those affected by them beyond political elites. In particular, the programme examines the relationship between peace processes and political settlements, and how more inclusive political settlements can be negotiated in these moments of change.

PSRP focuses on three broad research questions relating to political settlements:

1. How do different types of political settlement emerge, and what actors, institutions, resources, and practices shape them? What is their interrelation to peace processes and peace agreements?
2. How are political settlements shaped by internally-driven initiatives, including the impact of gender-inclusive processes and rule of law institutions?
3. How, and with what instruments, can external actors engage with political settlements?

With the primary focus on conflict and post- conflict countries and regions, PSRP is the first major international project dealing with the interrelations between political settlements and peace processes, conflict and peace. While it is focused on countries in the global south, it has involved comparative research on Northern Ireland.

Dr McNicholl the author is a post-doctoral research fellow at the University of Edinburgh School of Law, and is currently working as a part of the DFID funded Political Settlement's Research Programme [DFID 6663]. His academic work has focused on national identity and political attitudes in Northern Ireland, including work on Brexit and how the Northern Ireland peace process can be viewed in comparison with other peace agreements elsewhere.

PSRP conducts research into the ways in which violent conflict is brought to an end. They are particularly interested in ways in which peace agreements, and peace processes more broadly can be inclusive not only of those former enemies that engaged in conflict, but of other non-dominant groups that can be left behind following war.

This request for evidence is very much to be welcomed. The evidence below insofar as it goes beyond the remit of the Political Settlement Research Programme in giving concrete responses to questions asked, draws on the research of Dr McNicholl, and while it is a part of the work of PSRP to provide evidence such as this based on our research, the programme does not hold a particular position on how Northern Ireland should be governed.

The evidence below focuses on **the effect the New Decade, New Approach agreement may have on the future stability of the institutions**, but also touches on **whether funding should be linked to the functioning of the institutions**. It will also discuss other **ways in which good governance could be improved**. The structure takes the form of a list of threats to the stability of institutions and describes and evaluates how the new agreement deals with these

Threats to institutional durability

1: Declining Public Trust

Attitude survey data points to a long-term trend of declining public faith in, and support for, the devolved institutions. The perception that the Assembly works in the best interests of the people of the region declined between 2007 and 2015 from 60% to 32%¹. The proportion of people who prefer the current institutions as a long term solution has recently dipped below 50%, and now stands at only 40%, down from 66% in 2007. During Brexit negotiations, there was moderate increase in preference for reunification among Catholics due to concerns about the possibility of a hard border², but at the same time there was an increase in preference for direct rule among Protestants.

Prior to the collapse of the institutions, there was widespread dissatisfaction that popular policies such as abortion reform and marriage equality were blocked from legislative progress, concerns about a lack of transparency about party funding, and a number of accusations of government impropriety, most notably the Renewable Heating Incentive (RHI) scandal, deepened distrust. This was only further exacerbated by the long hiatus of devolved government that manifested itself in greater support for parties that did not form the previous executive.

¹ All attitude survey data comes from the Northern Ireland Life and Times Survey, ARK, <https://www.ark.ac.uk/nilt/>

² Garry, McNicholl, O'Leary, Pow, 2018 - Northern Ireland and the UK's Exit from the EU: What do People Think, The UK in a Changing Europe,

The New Decade, New Approach document does go some way to resolving these issues in two ways. First, it accounts for those concerns about corruption by expanding provisions for transparency in the civil service and in government. Improved record keeping, including the minutes of meetings between ministers and external bodies is to be welcomed, and if introduced some years ago could plausibly have stopped some of the persistent scandals before they occurred. Similarly, safeguards for whistle-blowers will improve reporting of bad practices, but more will also improve public trust in the propriety of governance.

It has been argued that power-sharing executives have a tendency to encourage a secretive form of government that allows one time enemies to make deals that may not be received well by their supporters. Accusations such as this have been recently made against the consociational government in Lebanon³. Academic work has suggested power-sharing may even promote certain kinds of corruption⁴. These new measures for transparency in the New Decade, New Approach agreement are welcome and overdue given that this is the first of 35 peace agreement documents related to the Northern Ireland peace process since 1990 to include provisions that counter corruption⁵. However, the full effect of the agreement on public trust will come from the extent to which it is to be implemented and the degree to which those found to act inappropriately are held accountable.

2: Legislative Logjam

Between 2011 and 2016 parties in the Assembly used the petition of concern 118 times on 31 bills and motions⁶. The vast majority of these were tabled by the DUP because they were large enough to not require cooperation with other parties to gather enough signatures. Not only was this a significant impediment to governance but was destabilising for the institutions. Popular legislation on abortion reform and marriage equality, which were preferred even by a majority of supporters of the DUP, appeared to have no avenue for progress, increasing public dissatisfaction with the institutions.

Veto mechanisms such as the petition of concern are a key component of the classic formation of consociational government, particularly in post-conflict settings. Armed non-

³ Financial Times, January 21st 2020, Lebanon forms government of technocrats to confront crises, <https://www.ft.com/content/7a148526-3c93-11ea-a01a-bae547046735>

⁴ Haass & Ottmann, 2017, Profits from Peace: The Political Economy of Power-Sharing and Corruption, https://econpapers.repec.org/article/eeewdevel/v_3a99_3ay_3a2017_3ai_3ac_3ap_3a60-74.htm

⁵ Bell, Christine, Sanja Badanjak, Robert Forster, Astrid Jamar, Kevin McNicholl, Kathryn Nash, Jan Pospisil, Laura Wise (2019). PA-X Codebook, Version 1. Political Settlements Research Programme, University of Edinburgh, Edinburgh. www.peaceagreements.org

⁶ McCulloch, A. (2018). The Use and Abuse of Veto Rights in Power-Sharing Systems: Northern Ireland's petition of concern in comparative perspective. *Government and Opposition*, 53(4), 735-756.

state actors can be persuaded to take a political route with the promise that while they may not always get what they want, they can be assured of not having to endure unfettered rule by a hostile majority group. It is not common however for this mechanism to be used to the extent it has been in Northern Ireland.

There is little in the New Decade, New Approach that fundamentally alters how the petition of concern operates, and it seems possible, if not probable, that in the future similar controversies will occur again. While no parties now enjoys the full 30 seats in the Assembly required to sign a petition without the help of other MLAs, getting these additional signatures is unlikely to be difficult in most cases. While promises by the parties to not abuse the petition is welcome, similar commitments were also made in the Fresh Start agreement of 2015. Commitments to only use the provision in exceptional circumstances are insufficient where there is no agreed definition of what its intended purpose is. The new agreement does indicate that there is a widespread willingness among parties to review this process.

As mentioned by Dr Rice in her submission to this committee, alternative formations of the mutual veto mechanism exist elsewhere. These differ in terms of how they are triggered and what happens when they are used. For some, only particular pre-defined issues are permitted to be vetoed, while more open forms also exist but do not suffer the same impasses due to a wider programme of 'de-ethnising' of party politics, which itself can be problematic. Once triggered, there can be a requirement for a higher body, such as the judiciary that determine the appropriateness of the claim to veto, or there can be a call for a vote with supermajority support for the motion in the legislature.

In coming to a more permanent solution to this conundrum there first has to be an agreement about what the purpose of the petition is. If it is simply to avoid a majority in the Assembly passing legislation that negatively impacts upon one community then there should be a requirement for those signing the petition to justify how this is the case, and this justification must be accepted by some other body, such a court.

If a more open scope for veto is to continue to be accepted, then there should be some other mechanism to reduce its use. The new agreement allows for a 14 day period of deliberation that follows a petition of concern. This will permit further negotiation between parties that could be shown to be helpful, but past experience indicates that additional time for negotiation does not always mean more chance of agreement.

These are decisions that will have to be made if future collapse and renegotiation is to be avoided. There will be controversial decisions for which there may be intractable disagreement in the future, most notably on the recommendations of the Irish Language

Commissioner. It may then be fruitful to begin a wider consultation to discuss what the petition is for and how it should operate. Citizens' assemblies for instance have been shown to be a robust way in which the public can contribute to a structured conversation on issues such as this where parties fail to find agreement.

Collapsibility of institutions

Under current and previous rules it is relatively easy for the largest party of nationalism or unionism to collapse the institutions by resigning their member's position as First or deputy First Minister. Given this has occurred so frequently since 1998 there have been calls to make it more difficult or impossible in order to maintain the stability of government. The New Decade, New Approach agreement does not substantively change this mechanism, but does give more time following resignations before a new Assembly is called. This may have the effect of giving more time for negotiations. However, the experience of the last collapse does suggest that time is not necessarily enough for successful negotiations to be completed. The threat of new elections did seem to have a role in encouraging parties to sign a new deal, but this threat was made effective by an expectation that the main parties could suffer a loss of seats. If elections are likely to return the same Assembly arithmetic and the issue has not been resolved, then these are not likely to lead to restoration of the institutions.

A counter-intuitive perspective would be that the fact the institutions only exist by the consent of the main parties has added to their longevity. While making it more difficult for parties to collapse the institutions may seem like a measure that could strengthen of the institutions, the opposite is more likely. Fundamental changes to the mechanisms of power have only occurred by collapse and renegotiation, adding a level of flexibility that avoids complete abandonment of devolution. New academic literature produced by the Political Settlement Research Programme on peace-building highlights the value of political 'unsettlement'⁷. Rather than viewing the past collapses of Stormont as failure to solve the Northern Ireland conflict, they could be seen as an outcome of the process's durability which is facilitated by this ability to collapse government. The question then becomes, how to negotiate both the resolution of the issue, and ideally also incrementally increase the capacity of the constitutional framework and institutions to deal with further crises in the future, with a view to gradual building of greater stability. A more rigid approach could make future crises lead to a permanent end to local government. There may be something to be said for instead building in moments of 'periodic review', or establishing some sort of international

⁷ Pospisil, 2018, *Peace in Political Unsettlement: Beyond Solving Conflict*, Springer

implementation mechanism (such as the Policing reform had), to supplement the British-Irish review under the agreement, to enable moments when negotiation ‘outside’ the institutions is needed to address their collapse or imminent collapse. So ‘required mediation’ before collapse is allowed, of some form.

This committee has asked specifically about the merits of encouraging the stability of government only giving funding if the institutions are intact. This has the potential to be counter-productive and dangerous for three reasons. First is the reason discussed above; that undermining the ability to collapse and renegotiate could make any future collapse more permanent. Second, there is no guarantee this would pressure the parties to stay in government if their supporters agreed with their leadership, and could even heighten hostility toward the British government. Finally, and most significantly, the economic consequences of withdrawing funding could have a serious detrimental effect on society such that there is a greater risk of paramilitarism. During the Brexit negotiations, the PSNI highlighted the danger that a ‘no-deal’ Brexit could cause due not only to increased security at the border, but because of just such an economic shock. It is widely regarded that there is currently insufficient funding for commitments made in the most recent agreement and given the new threat to the economy due to the Covid-19 crisis, any further stress that could result from a further denial of funding could be particularly dangerous. All efforts should be made to reduce socio-economic disadvantage for its own sake, but also because this can be a threat to security.

Societal Division

Northern Ireland remains a deeply divided society, with only approximately 7% of children attending integrated schools⁸, and housing largely focused in single identity areas. In spite of commitments there has been little progress with the removal of so-called ‘peace walls’.

Whether the institutions collapse, and whether they revive after collapse has been shown to be largely a product of public attitudes toward them. Issues such as legacy and continued social division must then be addressed if future crises are to be avoided or mitigated against. The new agreement does include a definition of sectarianism from The Executive's 'Together Building a United Community' Strategy, as “threatening, abusive or insulting behaviour or attitudes towards a person by reason of that person's religious belief or political opinion; or to an individual as a member of such a group”. It would be a positive step that sectarianism

⁸ Department of Education, 2016, <https://www.education-ni.gov.uk/articles/integrated-schools>

were not only understood in these individualistic terms, but also as a more societal phenomena that includes persistent division. While single identity traditions and culture are not a threat to peace or stability, a more fundamental moving from the causes of conflict must include more government focus on ending this division in the lives of citizens.

Legacy Issues. Legacy have periodically destabilised the institutions and remain ongoing. This new agreement does reiterate Stormont House commitments to legacy issues and the UK government's commitment to fund these. We would note that this is an area which has had proposals and consultations for many years, but where proposals that had a measure of cross community buy-in (but not necessarily political consent) or were agreed previously between the parties, have not been implemented. Lack of trust in proposals is therefore high, raising the risk that legacy questions can destabilise the institutions. The introduction of a link to commitments given to veterans introduces in a different way, a new British government political position that further complicates the issue, in ways that the agreement reached between the parties, based as it was on past agreements, has not factored in. The NIO statement on implementation,⁹ is very vague, and does not give a good indication of how the complex legal issues in ending 'the cycle of reinvestigations' will be dealt with, or how 'veterans' issues will be dealt with (the overseas bill not applying). These proposals are therefore already the subject of inconsistent messaging between the UK National government, and the Secretary of State for Northern Ireland, with respect to how measures will deliver for victims, and for state force 'veterans', and the NIO statement gives little sense of how these will be resolved. This messaging risks leaving key constituencies further aggrieved by the process, rather than putting an end to it. It is difficult to see any process such as this putting to an end ongoing investigations without (a) political buy-in about proposals from the Northern Irish political parties, but also the British and Irish governments at the highest level, where there was a clear understanding of the trade-offs that were going to be implemented and how they were going to affect victim and veteran demands where those are opposed (b) a way of reconciling the proposals with the European Convention on Human Rights, and it his was not through a straightforward compliance route, with the explicit involvement of the Council of Europe, through the Ministerial implementation mechanism. There will be no easy short-cut to a position on the past that will build the types of stability and resolution that the agreement is seeking.

⁹ UK Government Sets out a Way Forward on the Legacy of the Past in Northern Ireland, 18 March 2020, <https://www.gov.uk/government/news/uk-government-sets-out-way-forward-on-the-legacy-of-the-past-in-northern-ireland>.

