



The Good Friday Agreement – Prisoner Release Processes

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Contents

Abstract.....	6
Background.....	7
The Good Friday Agreement, 1998. Sub-Section	
Prisoner Releases	10
The Release Process	11
Aftermath and Reintegration.....	16
Victims.....	16
Reintegration of Prisoners.....	17
Appendix.....	18
Prisoner Release Overview	18

Abstract

Efforts to resolve the conflict in Northern Ireland have taken decades to manifest into any discernible success, facilitating expansive multi-actor participation, a series of convoluted peace programmes, and compromises by the British Government, the Northern Irish authorities and the various militant entities and third party interlocutors. The signing of the Good Friday Agreement in 1998 finally initiated an embryonic but genuine process of accord and mutual reconciliation. However, to achieve such levels of co-operation a number of obstacles had to be overcome, principally the contentious issue of prisoner releases. This paper will first provide an overview of the conflict and peace process, and then examine the design and implementation of the Agreement's discharge mechanisms. Further analysis will include an assimilation of its repercussions in a wider context by incorporating the reaction of both the prisoners and that of the wider community.

With thanks to Michael Jones for his assistance in the preparation of this paper

Background

Since the formation of the Northern Ireland state in 1920, there has been substantial precedent for initiating prisoner release legislation as a composite mechanism of various peace processes in both the North and South. For example 130 suspected Irish Republican Army (IRA) members were released as a result of the Tri-partite Agreement between the British government and its Irish counterparts in 1925, with the prisoner release process being assimilated into a ‘package of concessions in return for increased recognition of partition by the Free State government’.¹ Similarly, after the IRA ‘border campaign’ of 1956 to 1962, 89 internees were released after a pledge renouncing violence and 25 prisoners were discharged after the 1965 Royal Prerogative of Mercy.²

However such arrangements were undermined by the development of a British managerial strategy of ‘criminalisation’ (1976-1981). Designed and implemented under successive Conservative governments aiming to ‘...portray the conflict as a law and order or security problem rather than a political problem’,³ it was developed in response to a massive expansion in prison populations of which 50 per cent were incarcerated for politically motivated offences.⁴

1 Kieran McEvoy, ‘Prisoners, the Agreement, and the Political Character of the Northern Ireland Conflict’ *Fordham International Law Journal* (1998) Volume 22, p. 1546.

2 Kieran McEvoy, ‘Prisoners, the Agreement, and the Political Character of the Northern Ireland Conflict’ *Fordham International Law Journal* (1998) Volume 22, p. 1547.

3 Kieran McEvoy, ‘Prisoners, the Agreement, and the Political Character of the Northern Ireland Conflict’ *Fordham International Law Journal* (1998) Volume 22, , p. 1540.

4 Kieran McEvoy, ‘Prisoner Release and Conflict Resolution: International Lessons for Northern Ireland’, *International Criminal Justice Review* (1998), Volume 8, Issue 33, p. 40.

Such policies focused on depoliticising paramilitary violence and to ‘remove all practical and symbolic differences between terrorists and ordinary prisoners’,⁵ including segregation of paramilitary agencies, any recognition of an intra-penal command structure and to implement a rigid enforcement of uniform and work regulations. The archetypal expression of such policies was found in the ‘H Blocks’ of Long Kesh/Maze Prison, which housed inmates imprisoned under scheduled offences after 1st March 1976. Prisoners without Special Category Status began protesting for recognition immediately after their transfer, leading to the refusal to wear prison uniform (organised by Kieran Nugent) and eventually a series of hunger strikes in both 1978 and 1981, culminating in the death of Bobby Sands in 1981. Eventually, after extensive domestic and international campaigning, the British government diluted their enforcement policies during the 1980s, essentially granting political status to prisoners in all but name, segregating Republican and Loyalist inmates and turning a blind eye to the instillation of paramilitary command structures.

Prisoners were, in many respects central to the Northern Ireland peace process initiated in the 1990s as ‘neither Republicanism nor Loyalism would have been able to move away from political violence without the support of their prisoners, and the Good Friday Agreement could not have been concluded without provisions relating to the early release of such prisoners.’⁶ Indeed in 1994 the

5 Kieran McEvoy, ‘Prisoners, the Agreement, and the Political Character of the Northern Ireland Conflict’ *Fordham International Law Journal* (1998) Volume 22, p. 1540.

6 Kieran McEvoy, ‘Prisoners, the Agreement, and the Political Character of the Northern Ireland Conflict’, *Fordham International Law Journal* (1998) p.1541.

Ulster Defence Association declared any cease-fire could only be sanctioned by explicit prisoner support. Similarly the 'withdrawal of support for political talks by loyalist UDA/UFF prisoners in early 1998 led to the Secretary of State, Mo Mowlam, entering into direct discussions with prisoners in the Maze Prison.'⁷

The 1997 ascendency of the Blair Administration injected flexibility into the intransigent orthodoxy of British policy regarding Northern Ireland, and in contrast to the failures of 1994, the principle political actors, including Sinn Fein, now regarded prisoner releases as a key element of all-party peace negotiation rather than the previous 'bilateral negotiations between civil servants.'⁸ The usual contentions surrounding the conditions of disarmament were removed from discussions, and whilst Labour rhetoric alluded to agreements of non-violence, prisoner releases were entirely independent of any decommissioning prerequisites. Whilst many members of the community, particularly the Unionists, were concerned with this component of the Agreement it was viewed as necessary to appease the Provisional IRA, Ulster Volunteer Force and Ulster Defence Association without whom there could be no resolution. As a result between 1998 and 2012 506 prisoner release applications have been approved under the terms laid out in the Good Friday Agreement.

7 Alan Smith, 'Citizenship Education in Northern Ireland: Beyond National Identity?', *Cambridge Journal of Education* (2003), Volume 33, p. 21.

8 Kieran McEvoy, 'Prisoners, the Agreement, and the Political Character of the Northern Ireland Conflict', *Fordham International Law Journal* (1998) p. 1553.

The Good Friday Agreement, 1998.

Sub-Section Prisoner Releases⁹

1. ‘Both Governments will put in place mechanisms to provide for the accelerated programme for the release of prisoners, including transferred prisoners, convicted of scheduled offences in Northern Ireland or, in the case of those sentenced outside Northern Ireland, similar offences (referred to hereafter as qualifying prisoners). Any such arrangements will protect the rights of individual prisoners under national and international law.’
2. ‘Prisoners affiliated to organisations which have not been established or are not maintaining a complete and unequivocal ceasefire will not benefit from the arrangements. The situation in this regard will be kept under review.’
3. ‘Both Governments will complete a review process within a fixed time frame and set prospective release dates for all qualifying prisoners- providing for the advance of the release dates of qualifying prisoners while allowing account to be taken of the seriousness of the offences for which the person was convicted and the need to protect the community. In addition, the intention would be that should circumstances allow it, any

9 **Table of contents; Declaration of support; Constitutional issues.**
[news.bbc.co.uk/nol/shared/bsp/hi/pdfs/07_12_04_ni_agreement_01.pdf](https://www.bbc.co.uk/nol/shared/bsp/hi/pdfs/07_12_04_ni_agreement_01.pdf)

Strand One; Strand Two; Strand Three.

[news.bbc.co.uk/nol/shared/bsp/hi/pdfs/07_12_04_ni_agreement_02.pdf](https://www.bbc.co.uk/nol/shared/bsp/hi/pdfs/07_12_04_ni_agreement_02.pdf)

Rights, safeguards and equality of opportunity; Decommissioning; Security; Policing and justice; Prisoners; Validation; Implementation and review.

[news.bbc.co.uk/nol/shared/bsp/hi/pdfs/07_12_04_ni_agreement_03.pdf](https://www.bbc.co.uk/nol/shared/bsp/hi/pdfs/07_12_04_ni_agreement_03.pdf)

qualifying prisoners who remain in custody in two years after the commencement of the scheme would be released at that point.’

4. ‘The Governments will seek to enact appropriate legislation to give effect to these arrangements by the end of June 1998.’
5. ‘Both Governments continue to recognise the importance of measure to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, re-training and/or re-skilling, and further education.’

The Release Process

The mechanisms for prisoner release were installed through the Northern Ireland (Sentences) Act of 1998, and the Criminal Justice Act in the Republic, both of which stated prisoners affiliated with paramilitary organisations that had established and maintained a complete and unequivocal cease-fire (under Article 8(a) and (b)) were eligible for release. Moreover all parties eventually agreed to a fixed time frame for the process to be completed.

In contrast to previous agreements, the terms of release were not underpinned by a prerequisite of the prior decommissioning of paramilitary weapons. The Bill installed the ‘Sentence Review Commission’ as an independent body to oversee the process, the

membership of which was composed of prominent human rights activists including both Brian Currin and Sir John Blelloch.¹⁰ Under the pragmatic framework designed by the Agreement, eligibility for early release of qualifying prisoners includes:¹¹

- ‘the prisoner is serving a sentence of imprisonment in Northern Ireland;
- ‘the sentence is one of imprisonment for life or for a term of at least five years;
- the offence was committed before 10th April 1998
- if the sentence was passed in Northern Ireland, the offence:
- was a scheduled offence; and
- was not the subject of a certificate of the Attorney General that it was not to be treated as scheduled offence
- if the sentence was [assed in Great Britain, the offence;
- was committed in connection with terrorism and with the affairs of Northern Ireland; and
- is certified as one that would have been scheduled, had it been committed in Northern Ireland
- the prisoner is not a support of a specified organisation’ (i.e. each individual must be a member of a party involved in the ceasefire);
- ‘if the prisoner was released immediately, he would not:
- be likely to become a supporter of a specified organisation, or

10 Kieran McEvoy, ‘Prisoners, the Agreement, and the Political Character of the Northern Ireland Conflict’, *Fordham International Law Journal* (1998) p.1559.

11 Sentence Review Commissioners, ‘Annual Report 2001’ (July 2001), <http://www.sentencereview.org.uk/download/ar01.pdf> [Accessed August 2013].

- be likely to become involved in acts of terrorism connected with the affairs of Northern Ireland; and
- if a life sentence prisoner, be a danger to the public.’

Further stipulations includes:¹²

- ‘If released, a qualifying prisoner must not be likely to become a supporter of an organisation not involved in the ceasefire or become concerned in the commission, preparation or instigation of acts of terrorism connected with the affairs in Northern Ireland.’
- ‘Fixed term sentences were reduced by two thirds; life sentences were calculated by how long such prisoners would usually serve and then reduced by a third.’
- ‘All remaining prisoners still incarcerated by June 2000 would be released.’

The Act also provided a ‘monitoring function’ to allow flexibility, ensuring organisations not currently acting under the framework of eligibility could, after reforms, be integrated into the system.¹³ Once operational, prisoners were encouraged to make applications for release to the Commission; 446 requests were received by 1998 and were transferred to the Northern Ireland Prison Service for confirmation of accuracy¹⁴. After verification, the applications were

12 Northern Ireland (Sentences) Bill, 1998, <http://cain.ulst.ac.uk/hmso/nisent98.htm> [Accessed July 2013].

13 Kieran McEvoy, ‘Prisoners, the Agreement, and the Political Character of the Northern Ireland Conflict’, *Fordham International Law Journal* (1998) p. 1560.

14 Kieran McEvoy, ‘Prisoners, the Agreement, and the Political Character of the Northern Ireland Conflict’, *Fordham International Law Journal* (1998) p. 1560.

returned to the Commission and prisoners received a preliminary indication of whether they may be freed. Such a conformation was subsequently followed by a substantive determination. Post decision mechanisms were also established whereby dissatisfied prisoners could ‘appeal to a different panel of Commissioners or could potentially request a judicial review of the decisions’.¹⁵ The entire process was moderated by the Office of the Secretary of State, which retained over-arching power to suspend the scheme to prevent the release of individuals considered not to meet the criteria, or revive previously dismissed applications.¹⁶ It also has the authority to dismiss any Commissioner under Clause 1, Schedule 1

However, Clare Dwyer states where ‘some international experiences demonstrate the use of amnesties and/or release by Executive Order, the system implemented in Northern Ireland has attempted to provide a ‘normal’ structured legalistic assessment process for release.’¹⁷ Prisoner releases were conditional, as opposed to a total amnesty or pardon, with each individual receiving a licence which could be revoked if the Commissioners or Secretary of State for Northern Ireland decided they had re-joined a terrorist organisation or supported terrorist activity. The release mechanisms therefore allowed a relatively stringent regulatory and monitoring framework for authorities to operate successfully; only 16 out of 449 prisoners

15 Kieran McEvoy, ‘Prisoners, the Agreement, and the Political Character of the Northern Ireland Conflict’, *Fordham International Law Journal* (1998) p. 1560.

16 Kieran McEvoy, ‘Prisoners, the Agreement, and the Political Character of the Northern Ireland Conflict’, *Fordham International Law Journal* (1998) p. 1560.

17 Clare Dwyer, ‘Risk, Politics and the Scientification of Political Judgement: Prisoner Release and Conflict Transformation in Northern Ireland’, *The British Journal of Criminology* (2007), Volume 47, p. 779.

freed between 1998 and 2007 had their licence revoked, and of these 12 were individuals serving life sentences.¹⁸ Indeed Dwyer compares such statistics to the ‘recidivism rate of over 50 per cent within two years for ‘traditional’ offenders in the United Kingdom.’¹⁹ If judged only on an empirical platform the prisoner discharge programme in Northern Ireland was a resounding triumph. Nevertheless they did also generate a substantial amount of controversy from both sides of the political divide. Kieran McEvoy argues that the extensive measures of the process were ‘widely viewed by prisoners’ groupings as minimalist and begrudging’.²⁰ Similarly the ramifications of the Agreement were also criticised by the Conservatives, Liberal Democrats, Unionists and the moderate nationalist Social Democratic and Labour Party (SDLP), blaming Prime Minister Blair for essentially ‘giving an effective amnesty to anyone accused of offences in Northern Ireland before 1988.’²¹

18 Clare Dwyer, ‘Risk, Politics and the Scientification of Political Judgement: Prisoner Release and Conflict Transformation in Northern Ireland’, *The British Journal of Criminology* (2007), Volume 47, p. 795.

19 Clare Dwyer, ‘Risk, Politics and the Scientification of Political Judgement: Prisoner Release and Conflict Transformation in Northern Ireland’, *The British Journal of Criminology* (2007), Volume 47, p. 795.

20 Kieran McEvoy, ‘Prisoners, the Agreement, and the Political Character of the Northern Ireland Conflict’, p. 1551.

21 ‘IRA Fugitives will be Free to Return Home under Amnesty Scheme’, *The Guardian*, November 2005, <http://www.theguardian.com/uk/2005/nov/10/northernireland.northernireland1>.

Aftermath and Reintegration

Victims

- a. A central issue arising from the Good Friday Agreement was the perception of reintegration as ‘rewarding men of violence’²², particularly amongst Unionist supporters. The post- Dublin ‘Yes’ vote dropped 10%, with 50% of the ‘No’ vote citing the prisoner release as the lynchpin of their opposition.²³
- b. However the reaction of Northern Ireland’s anti-paramilitary agencies cannot be condensed into a single homogenous bloc, in reality it garnered an immensely diverse reaction.
 - i. E.g. many victims argued for a veto over the processing of particular individuals, some have lobbied the Sentence Review Commission via anti-Agreement Unionist politicians and others, including Joan Wilson (widow of campaigner Gordon Wilson), supported the releases as a component of peace-building.²⁴
- c. In response a mechanism was inserted into the process to ensure that victims would be informed when prisoners responsible for or related to their loss were released, to allow time for them to emotionally prepare themselves.²⁵

22 ‘The Good Friday Agreement- An Overview’, *The Democratic Progress Institute* (2013), p. 39.

23 Kieran McEvoy, ‘Prisoners, the Agreement, and the Political Character of the Northern Ireland Conflict’, p. 1557.

24 Kieran McEvoy, ‘Prisoners, the Agreement, and the Political Character of the Northern Ireland Conflict’, p 1570.

25 Kieran McEvoy, ‘Prisoners, the Agreement, and the Political Character of the Northern Ireland Conflict’, p. 1571.

Reintegration of Prisoners

- d. The government of Northern Ireland was obliged to support released prisoners with employment opportunities, retraining and further education if requested through the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO).
- e. However many former prisoners were reluctant to take advantage of NIACRO programmes and thereby ‘acquiescing to the label criminal’²⁶ which had formed the core contention of previous prisoner hunger strikes and protests in the 1990s.
- f. The European Union Peace and Reconciliation Fund invested £1.25 million to support prisoner re-integration schemes- distributed by the Northern Ireland Voluntary Trust- which assisted in financing a ‘self help model for reintegration’ managed by former prisoners e.g. the Republican organisation Coiste na n-Iarchimi.²⁷

²⁶ Kieran McEvoy, ‘Prisoners, the Agreement, and the Political Character of the Northern Ireland Conflict’, p. 1571.

²⁷ Kieran McEvoy, ‘Prisoners, the Agreement, and the Political Character of the Northern Ireland Conflict’, p. 1572.

Appendix

Prisoner Release Overview²⁸

1988

- British government introduced the Northern Ireland (Sentences) Act to release prisoners on the 4th June- Second reading on 10 June.
- Prisoners affiliated with paramilitary organisations that had established and maintained a complete and unequivocal ceasefire (Article 8(a) and (b) were to be eligible for release.
- The Act established The Sentence Review Commission (Article 7) to assess cases on an individual basis.

30/07/1998

- As required by the 1988 Act, the Secretary of State of Northern Ireland specified supporters of the Continuity Irish Republican Army, the Loyalist Volunteer Force, the Irish National Liberation Army and the Real Irish Republican Army were not eligible for release- they did not maintain a complete and unequivocal ceasefire.
- An estimated 400-420 paramilitary prisoners were able to apply for early release.
- Oct 1988- total of 167 prisoners released.

²⁸ Timeline sourced from the Peace Accords Matrix, University of Notre Dame
https://peaceaccords.nd.edu/matrix/status/6/prisoner_release

1999

- Prisoner releases continued- Christmas period 131 prisoners granted extended home leave, and on the 16th December 308 were released.
- With release of high profile prisoners, public support for prisoner release dropped, according to a Belfast Telegraph opinion poll.

2000

- Final prisoner batch released on 28th July.
- Total of 428 pro British loyalists and pro Irish Republican prisoners were released under the terms of the Good Friday Agreement.

Post 2001

- The Sentence Review Commission continuously received applications for release of prisoners- between 1998-2012, commission received 636 applications and approved 506.



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