

CAJ's submission no. S295

CAJ's submission on the
UK's 3rd Periodic Report to the
Advisory Committee on the
Implementation of the
Framework Convention for the
Protection of National Minorities

March 2011

What is the CAJ?

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Joseph Rowntree Charitable Trust and the Oak Foundation.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

List of Abbreviations

CAJ	Committee on the Administration of Justice
CJI	Criminal Justice Inspectorate
CJR	Criminal Justice Review
CSI	Cohesion, Sharing and Integration
DCAL	Department of Culture, Arts and Language
ECNI	Equality Commission for Northern Ireland
FCNM	Framework Convention for the Protection of National Minorities
NGO	Non-governmental organisation
NICTS	Northern Ireland Court and Tribunal Service
NIPS	Northern Ireland Prison Service
OFMdFM	Office of the First Minister and the deputy First Minister
Police 50:50 Policy	50:50 policy for recruitment into the Police Service of Northern Ireland
PSNI	Police Service of Northern Ireland
Race Directive	Council Directive 2000/43/EC
S21	Sections 21 and 24 Justice and Security (NI) Act 2007
S44	Section 44 Terrorism Act 2000
S75	Section 75 Northern Ireland Act 1998
State Report	UK's 3 rd Periodic State Report
1737 Act	Administration of Justice (Language) Act (Ireland) 1737
The Charter	European Charter for Regional or Minority Languages
The Committee	Advisory Committee on the FCNM
The Opinion	Advisory Committee's Second Opinion on the UK, 2007
UK	United Kingdom
UNCESCR	United Nations Committee on Economic, Social and Cultural Rights

Executive Summary

Introduction

The Committee on the Administration of Justice ('CAJ') has limited its submission to those aspects of the application of the Framework Convention for the Protection of National Minorities ('FCNM') that cause us concern and may not be covered by other groups.

We are disappointed by the lack of information on Northern Ireland in the UK's 3rd Periodic State Report ('the State Report'), and recommend that further information be provided to the Advisory Committee ('the Committee'). CAJ is concerned that the UK's scope of application for FCNM is too narrow, as it precludes religious groups and is now static, given the repeal of the legislation within which the scope of application is defined.

Article 3

We are also concerned by the lack of reference to Irish identity in the State Report, which is of central importance to many in Northern Ireland, as recognised in the Good Friday / Belfast Agreement. CAJ confirms that the fair employment monitoring in Northern Ireland continues to be beneficial, given the ongoing inequalities and tensions in our community. We therefore recommend that it continues, particularly given that it is anonymous and only used for statistical purposes.

Article 4

CAJ advocates a Bill of Rights for Northern Ireland, as agreed in the Good Friday / Belfast Agreement. We are concerned that the government has not supported this project, and may subsume it into a wider UK debate.

CAJ is concerned that Northern Ireland's equality legislation is complex, piecemeal, inconsistent and incomplete. We recommend that the Single Equality Bill project be relaunched, as agreed in the St Andrews Agreement. We are concerned that, once the Police 50:50 recruitment policy lapses, there may not be adequate measures in place for the continued recruitment of Catholics into the police force.

CAJ is concerned that public authorities' statutory duty to have due regard to the need to promote equality of opportunity is not being effectively applied or enforced, which limits its ability to ensure full and effective equality for various

national minorities. Statistics show that inequalities remain for Catholics in relation to both employment and housing.

Article 6

Northern Ireland's integration policies, between the two main communities, risk worsening inequalities and community relations, as they do not take into account inequalities suffered. The emphasis on shared spaces without proper consideration of socio-economic inequalities, could inadvertently serve to weaken social cohesion. CAJ supports a more inclusive approach to religion in schools in Northern Ireland, to promote tolerance, respect and understanding.

CAJ is concerned by the low rates of detection and prosecution of hate crimes, including sectarian hate crimes. Further, we are concerned that the lack of safeguards for the 'stop and search' powers risk them being used as a 'tool of harassment' against national minorities. We believe that there are ongoing equality issues in Northern Ireland's prisons. In particular, there is a lack of monitoring, access to religious services and diversity training.

Article 10

CAJ is concerned by the exclusion of the Irish language in courts, and recommends the Irish Language Act is forthcoming, as agreed upon in the St Andrews Agreement.

Article 15

We are concerned that the proposed lapsing of the Police 50:50 recruitment policy would lessen Catholic representation in the Police Service of Northern Ireland, which is already proportionately low. We recommend that the Police 50:50 policy continue or that, at least, alternative measures be put in place to help ensure the effective participation of Catholics in public life. We also recommend that the government review Catholic representation in the prison service.

CAJ is concerned by the economic inequalities suffered by the Catholic community in Northern Ireland and that, in times of austerity, economic participation could worsen for various national minorities.

1. Introduction

The Committee on the Administration of Justice ('CAJ') is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its obligations in international human rights law. CAJ is co-convener of the Equality Coalition.

We welcome the opportunity to comment on the UK's 3rd Periodic Report to the Advisory Committee ('the Committee') on the implementation of the Framework Convention for the Protection of National Minorities ('FCNM'). We also look forward to meeting with a delegation of the Committee in Belfast on 7 March 2010. This submission is intended as a framework to aid discussion on that date. Following our meeting, we will send the Committee a list of recommendations arising from this submission and our discussion.

CAJ is a general human rights organisation, with a broad interest in several issues covered by the FCNM. We are aware that several other Northern Irish non-governmental organisations ('NGO') will be submitting comments on specific aspects of the application of FCNM in Northern Ireland. As such, this submission is focused on areas that may not be covered by other NGOs, in order to cover any gaps that may arise.

Although we recognise that the government may have made some progress in relation to the protection of national minorities, this submission will only address those issues that still cause us concern.

1.1 Information in State Report

We note, with disappointment, the lack of information on Northern Ireland provided in the UK's 3rd Period Report ('the State Report'). We understand that, due to a political stalemate in our devolved administration, the Executive did not submit a report to the UK government for inclusion in the State Report. We believe that this shows a lack of commitment to the FCNM, particularly as the Office of the First Minister and deputy First Minister ('OFMdFM') states as

one of its key strategic objectives ‘promoting better community relations, a culture of equality and rights’.¹

However, further to Article 25(2) FCNM, the ultimate obligation to submit a state report falls on the state party, which is the UK, not our local Executive. It is unsatisfactory that the UK government has not collated information on Northern Ireland for the State Report beyond policing and justice (which was at the time not yet devolved). The UK government’s failure to report on Northern Ireland is particularly inappropriate, given that the Executive’s lack of consensus was due to local tensions around national minority issues, which the FCNM is in place to address.

The UK has previously provided scant information on Northern Ireland in treaty reporting exercises. In 2009, the United Nations Committee on Economic, Social and Cultural Rights’ (‘UNESCR’) concluding observations on its last round of reporting on the UK commented on the ‘limited availability of information’² and reminded the UK ‘that it is that State party which is responsible for the implementation of the Covenant in all its territories.’³

In fact, the UK has devolved ‘observing and implementing international obligations’⁴ to Northern Ireland. However, the monitoring of and reporting on international obligations clearly remains the responsibility of the UK government.⁵ Therefore, although the UK’s Memorandum of Understanding on Devolution provides for Northern Ireland to submit relevant information for treaty reporting, that document still recognises that final responsibility for such matters rests with the UK.⁶

¹ OFMdfM website, at <http://www.ofmdfmi.gov.uk/index/about-ofmdfm/about-the-department.htm>.

² Concluding observations of the Committee on Economic, Social and Cultural Rights: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories, 12 June 2009, at para 12, found at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/429/21/PDF/G0942921.pdf?OpenElement>.

³ *Ibid.*

⁴ Schedule 2 para 3(c) Northern Ireland Act 1998, found at <http://www.legislation.gov.uk/ukpga/1998/47/schedule/2/paragraph/3>.

⁵ As not specifically excluded from the excepted list at Schedule 2 para 3(c) Northern Ireland Act 1998, *supra*.

⁶ Memorandum of Understanding on Devolution: D Concordat on International Relations – Northern Ireland, at para D3.4, and Common Annex, at para D4.3, found at <http://www.official-documents.gov.uk/document/cm78/7864/7864.pdf>.

We therefore call on both the Executive and the UK government to provide further information to the Committee on the situation of national minorities in Northern Ireland for the purposes of the State Report.

1.2 Scope of Application

We note the UK's insistence that the FCNM be applied within the UK 'with reference to "racial groups" within the meaning of Section 3(1) of the Race Relations Act 1976, which is to say any groups defined by "colour, race, nationality or national or ethnic origins".⁷ We believe that this scope of application is inappropriate for three key reasons.

First, the current definition excludes religious groups that may need the protection offered by FCNM. An obvious example is the situation of the Catholic community in Northern Ireland, which has suffered persistent inequalities. The Catholic community would not fall within the UK's narrow scope for FCNM. Similarly, many other religions would not be included, but could have difficulty expressing their culture. We would therefore recommend that the UK include religions within the scope of application of FCNM.

This approach has been supported by the Committee in its last Opinion on the UK ('the Opinion'), where it stated that 'the "racial group" criterion may result in exclusions from the Framework Convention's scope of application of groups that have legitimate claims to be covered... The Government should consider supplementing its current criterion based on recognition as a "racial group" in case law with other criteria to ensure that an equitable approach to the Framework Convention's scope of application is pursued.'⁸

Secondly, following the passing into law of the Equality Act 2010, most of the Race Relations Act 1976 has now been repealed, including s3(1). Therefore, the definition will now remain static, and will no longer have the benefit of court judgments to allow for a fluid and wide interpretation (as claimed in the State Report, at page 13).

⁷ Page 13 of State Report.

⁸ Advisory Committee Opinion on UK 2007, ACFC/OP/II(2007)003, hereinafter 'the Opinion', at para12 and 13.

Finally, the Committee clearly views its scope of application as extending to religious groups, as it recommended in its Opinion on the 2nd periodic UK report that ‘vigorous protection [be] afforded against discrimination, not only on grounds of race and ethnic or national origins, but also on grounds of religion and/or belief.’⁹

Article 3

- 1. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.*
- 2. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.*

2. Self-designation

2.1 Irish Identity in Northern Ireland

Article 3 FCNM clearly states that ‘[e]very person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such’. However, the State Report has not recognised the important self-designation of a considerable minority community in Northern Ireland as ‘Irish’. Indeed, the State Report only mentions ‘Northern Irish’¹⁰ identity (among those in Great Britain) in relation to the Census 2011. The most concerning reference in the State Report is to the government’s commitment to creating a ‘shared British identity’.¹¹

A central tenet of the Good Friday / Belfast Agreement was to ‘recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose’.¹² This approach has been reinforced through the Bill of Rights project and was one of the few substantive rights that the UK government chose to support in its

⁹ The Opinion, at para 63.

¹⁰ State Report, at page 14.

¹¹ State Report, at page 4.

¹² Good Friday / Belfast Agreement 1998, at para 1(vi), found at <http://www.nio.gov.uk/agreement.pdf>.

consultation¹³ in response to the Northern Ireland Human Rights Commission's ('NIHRC') advice on a Bill of Rights in Northern Ireland.¹⁴

We recommend that the UK reflects fully in its State Report, and all other documentation, its commitment to the freedom of the people in Northern Ireland to identify themselves as British, Irish or both.

2.2 Fair Employment monitoring

The Committee has previously commented on Northern Ireland's fair employment legislation, which places a duty on employers to monitor their workforce's "community background".¹⁵ The Committee stated that, although the practice is not consistent with the right to free self-determination, 'in the specific context of Northern Ireland, and at this particular moment in time, the determination by employers of the community background of their employees, trainees and applicants may be relevant in order to secure the fair participation of under-represented groups.'¹⁶

The Committee also recommended that the authorisation for employers to determine the "community background" of employees, trainees or applicants who have not provided the information themselves should be regularly reviewed. As such, CAJ records its continuing support for the monitoring of employment by community background. The fair employment model has enjoyed much success in Northern Ireland, but inequalities still exist between the two main communities, particularly in certain sectors.¹⁷

The determination of community background for fair employment monitoring is anonymous and is only used for the purposes of collecting accurate data on the makeup of the workforce in Northern Ireland. The individuals do not suffer any disadvantage as a result of the determination, which is used for purely statistical purposes. Therefore, we confirm that the monitoring is still relevant

¹³ Consultation Paper: A Bill of Rights for Northern Ireland: Next Steps, November 2009.

¹⁴ NIHRC, A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland, 10 December 2008, found at http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/51/A_Bill_of_Rights_for_Northern_Ireland_%28December_2008%29.pdf.

¹⁵ Fair Employment (Monitoring) Regulations (Northern Ireland) 1999, SRNI No. 148, as amended by the Fair Employment (Monitoring) (Amendment) Regulations (Northern Ireland) 2000, SR 2000 No. 228.

¹⁶ The Opinion, at para 48.

¹⁷ See, for example, sections 10.1 and 10.2 below.

‘to the objective of securing equality in the field of employment’¹⁸ and, we believe, essential to achieving full and effective equality in Northern Ireland.

Article 4

- 1. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.*
- 2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.*
- 3. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.*

3. Bill of Rights for Northern Ireland

CAJ has been an advocate of a Bill of Rights for Northern Ireland since our inception. Our commitment to a Bill of Rights has been a key contribution to seeking an end to the conflict in Northern Ireland. It has increasingly been recognised that infringing rights feeds and prolongs conflict; it is only when states abide by the rule of law and respect people’s rights that a safe and secure society can flourish. Furthermore, the Good Friday / Belfast Agreement creates an international obligation for the government to introduce a Bill of Rights ‘to reflect the particular circumstances of Northern Ireland’.¹⁹

CAJ believes that a Bill of Rights for Northern Ireland would help to ensure the rights outlined in the FCNM. A Bill of Rights would ensure that whoever rules this disputed ground cannot rule without respecting the rights of everyone who lives here, including those national minorities who do not identify primarily as part of the two main communities.

¹⁸ As set out in the Opinion, at para 49.

¹⁹ Good Friday / Belfast Agreement, 1998, at para 4 of RIGHTS, SAFEGUARDS AND EQUALITY OF OPPORTUNITY, found at <http://www.niassembly.gov.uk/io/agreement.htm#6>.

In response to the advice proposed by NIHRC,²⁰ the Northern Ireland Office ('NIO') put forward a set of proposals *A Bill of Rights for Northern Ireland: Next Steps*.²¹ CAJ found that the proposals in that document did not merit serious consideration as a Bill of Rights for Northern Ireland, as it disregarded the particular context of the Bill of Rights debate in Northern Ireland, and intended to append it to a very different debate on a UK Bill of Rights and Responsibilities.²²

We believe that the introduction of a true Bill of Rights for Northern Ireland would help ensure full and effective equality for national minorities, as required by Article 4 FCNM. However, the NIO's consultation document abandoned any of the rights, proposed by NIHRC, which would have a positive impact on national minorities. Therefore, we believe that the government's current Bill of Rights proposals would not ensure the principles of equality and non-discrimination for national minorities.²³

CAJ maintains that the NIHRC's advice provided robust methodology and approach, especially in relation to their understanding of the 'particular circumstances' of Northern Ireland. CAJ therefore believes that the government should review its proposals in full and not subsume the Bill of Rights for Northern Ireland into a 'national' debate, which fails to honour the spirit and letter of the Good Friday / Belfast Agreement. Given that a Bill of Rights for Northern Ireland has been an obligation for over 12 years, we urge the Committee to encourage the government to advance the project as a matter of urgency.

4. Legislation

4.1 (Single) Equality Act

The State Report makes lengthy reference to the Equality Bill, which has now become the Equality Act 2010. We would like to underline that the Equality Act 2010 does not apply to Northern Ireland. We are concerned that Northern

²⁰ NIHRC, *A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland*, 10 December 2008, found at http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/51/A_Bill_of_Rights_for_Northern_Ireland_%28December_2008%29.pdf.

²¹ Consultation Paper, *A Bill of Rights for Northern Ireland: Next Steps*, November 2009,

²² For CAJ's full response to the consultation, see www.caj.org.uk.

²³ See FCNM Explanatory Note, Framework Convention for the Protection of National Minorities, Council of Europe, ETS No. 157, in relation to Article 4.

Ireland still has a complex, piecemeal and inconsistent array of anti-discrimination and equality legislation. Indeed, the Committee has recommended that ‘existing inconsistencies in anti-discrimination legislation are removed.’²⁴

As the Committee is aware, there has been a long-standing project to pass a Single Equality Bill for Northern Ireland. Commitment to this project was reinforced in the St Andrews Agreement, where the government agreed to ‘work rapidly to make the necessary preparations so that legislation can be taken forward by an incoming Executive at an early date’.²⁵ However, despite this commitment, no progress has been made on a Single Equality Bill for Northern Ireland.

CAJ believes that anti-discrimination and equality law in Northern Ireland should be simplified, harmonised and strengthened. However, we do not support the whole-scale import of the Equality Act to Northern Ireland. We advocate careful consideration of the best legislation for our particular local context. We urge the Committee to recommend that this debate and legislation is made a priority for the legislative Assembly.

4.2 European Equality Directives

The European Commission (‘the Commission’) has sent out reasoned opinions to open infringement proceedings against the UK for non-implementation of aspects of three equality directives, including Council Directive 2000/43 /EC introducing equal treatment based on racial or ethnic origin (‘the Race Directive’).²⁶

The reasoned opinions have not been officially released, despite requests in Parliament.²⁷ The Commission does not release reasoned opinions and the UK government stated that it has an ‘understanding’ with the Commission that these would remain confidential.²⁸ This is disappointing, as the European

²⁴ The Opinion, at para 63.

²⁵ St Andrew’s Agreement, 2006, at Annex B, found at http://www.nio.gov.uk/st_andrews_agreement.pdf.

²⁶ See www.europa.eu.

²⁷ See Hansard, 2 December 2009, column 1190) and a written question in the House of Lords (Lord Alton of Liverpool, HL554).

²⁸ Lords Hansard, 06/01/10, at C96WA.

Ombudsman has urged Member States not to hide behind the Commission as an excuse not to release reasoned opinions.²⁹

We understand that the reasoned opinion on the Race Directive related to the interpretation of indirect discrimination. This has been partially corrected by the Race Relations Order (Amendment) Regulations (NI) 2009,³⁰ but our equality law still does not protect against the so-called 'anticipatory' indirect discrimination of national minorities, as required in the Race Directive.

It is clear from the press releases that the UK government has assured the Commission that the Equality Act 2010 would correct the incomplete implementation of the three equality directives.³¹ However, as stated above, the Equality Act 2010 does not cover Northern Ireland. Therefore, even if the Equality Act 2010 does correct the non-compliance with the equality directives in Great Britain, it would not do so in Northern Ireland. We would therefore urge the Executive to act in this regard.

4.3 Police 50:50

Article 4 FCNM clearly requires state parties to adopt adequate measures in order to promote full and effective equality and to take due account of the specific conditions of persons belonging to national minorities. One such measure in Northern Ireland is the Police (Northern Ireland) Act 2000, which provides for all recruitment to the Police Service of Northern Ireland ('PSNI') involving six or more posts to be allocated on a 50:50 basis for Catholics and Protestants/other ('the Police 50:50 Policy').

At the end of 2010, the government launched a public consultation on the Police 50:50 Policy,³² in which the Secretary of State for Northern Ireland made clear that he was 'minded not to renew the provisions.'³³ The results of the consultation process have not yet been published, but it is highly likely that

²⁹ Speech in Stockholm, 08/09/09.

³⁰ See <http://www.legislation.gov.uk/nisr/2009/410/contents/made>.

³¹ A member of the House of Commons quoted paragraph 19 of reasoned opinion No 226 as reading: "*The UK Government has informed the Commission that the new Equality Bill currently under discussion before the UK Parliament will amend this aspect of the law and bring UK law into line with the Directive*" (see Hansard 2 December 2009, at Column 1190).

³² Consultation document can be found at http://www.nio.gov.uk/review_of_temporary_provisions_-_2010_2011_consultation.pdf.

³³ *Ibid*, in foreword.

the government will end the Police 50:50 Policy, as its press release stated 'the balance of the argument favours letting the provisions lapse in March'.³⁴

CAJ believes that the Police 50:50 Policy is still necessary to promote the full and effective equality of Catholics in the police force, given the special conditions faced by them. The 'special conditions' include the lack of historic representation of Catholics in the police force; the selection differentials; the low retention rate for Catholics and the increased residual terrorist threat against catholic officers. Each of these issues will be discussed further in relation to Article 15 FCNM (at section 10.1).

Furthermore, the government's discussion of the Police 50:50 Policy in its consultation document suggests a fundamental lack of understanding in relation to the need for adequate measures to address special conditions of national minorities. When screening for potential impacts of the ending of the Police 50:50 Policy on equality of opportunity, the government stated that 'the restoration of merit based recruitment would reduce the negative impact of the existing provisions on equality of opportunity'.³⁵

By contrast, we believe that the Police 50:50 Policy is in place precisely to try to promote equality of opportunity, given the special conditions listed above. We are concerned, therefore, that the government either does not understand, or does not comply with, Article 4 FCNM.

4.4 S75 Northern Ireland Act 1998

Section 75 Northern Ireland Act 1998 ('s75') provides a duty on designated public authorities to have due regard to the need to promote equality of opportunity between persons of different religious belief, political opinion and racial group, among others. We believe that this is an important and potentially powerful tool to help ensure full and effective equality for national minorities. However, many public authorities do not apply s75 correctly, or at all, which undermines its effectiveness.

For example, each of the Executive's departments recently consulted upon their draft budgets 2011-15. Our local administration has suffered severe cuts,

³⁴ Press release accompanying launch of Police 50:50 Policy consultation document on 11 November 2010, found at <http://www.nio.gov.uk/secretary-of-state-to-consult-on-50-50-provisions/mediadetailhtm?newsID=16765>.

³⁵ Police 50:50 Policy consultation document, *supra*, at para 48.

which will undoubtedly have disproportionate effects on many disadvantaged groups, including national minorities, as they have a higher uptake of public services. However, none of the departments carried out a substantive assessment of the impacts of their draft budgets on equality groups, including national minorities. As a result, we do not know the extent or nature of the impacts and alternative, mitigating measures cannot be put in place.³⁶

We have been monitoring the application of s75 for many years, and could provide many examples of the lack of proper implementation by public authorities. Instead, we would like to draw your attention to five key issues arising, which undermine the operation and objectives of s75.

First, public authorities often apply s75 in a procedural, as opposed to substantive, manner. This was one of the central problems identified in a review of s75 by the Equality Commission for Northern Ireland ('ECNI') in 2009.³⁷ Also, the courts in England and Wales, for their comparable race equality duties,³⁸ have made clear that an 'equality impact assessment should be an integral part of the formation of a proposed policy, not justification for its adoption... a record will not aid those authorities guilty of treating advance assessment as a mere exercise in the formulaic machinery. The process of assessment is not satisfied by ticking boxes.'³⁹

Secondly, public authorities often do not refer to underlying data, as was the case in many Budget 2011-15 consultations, which prevents public authorities from understanding how their policies may impact upon minorities. Where data is used, and an equality group is found to be impacted upon to a greater extent by a policy, public authorities have found this to be due to 'self selection' or an irregularity of data, rather than analysing the impacts on equality.

The idea of 'self selection' has been argued by the government in the context of the criminal justice system, whereby it claimed that individuals 'self-select' to be impacted upon by a policy, by committing crimes. The extension of this argument would be that national minorities self-select to be impacted upon by

³⁶ For more information, please refer to our consultation responses to the draft budgets 2011-15, which can be found at www.caj.org.uk.

³⁷ ECNI, S75 Keeping it effective, November 2009, found at <http://www.equalityni.org/archive/pdf/EffectivenessReviewFinalRpt1108.pdf>.

³⁸ In relation to s71 Race Relations Act 1976, which requires public authorities to have due regard for the need to promote the equality of opportunity in relation to race.

³⁹ R (Kaur and Shah) v London Borough of Ealing [2008] EWHC 2062, at paras 24 and 25.

policies due to, for example, speaking minority languages. This is both counter-intuitive and contrary to s75. Despite the rejection of 'self-selection' by the courts,⁴⁰ the newly devolved Department of Justice has continued with this line of argument.⁴¹

Where the increased participation of Catholic lawyers was found in a consultation regarding a change to defence remuneration, the Northern Ireland Courts and Tribunals Service ('NICTS') chose not to analyse this trend any further, and justified this by stating that 'the proposals do not target these groups and it is the NICTS's view that the greater impact arises from the fact there are more people from these groups within the survey.'⁴² Clearly, survey results must be analysed as they fall or, if the survey information is not reliable, it should be rejected in full.

Thirdly, there is a fundamental misunderstanding of the concept of 'equality of opportunity'. For example, public authorities often find that the 'universal application' of their policies allows for a positive or neutral impact on all equality groups.⁴³ This does not take account of the special conditions of national minorities and the need for adequate measures to address them.

Due to underlying inequalities in our society, some groups may have less access to or benefit from a policy, despite its universal application or intention that they benefit all. In fact, it is most likely that the barriers faced by minority groups would prevent their access, which would further exacerbate the inequalities experienced. S75 is in place to help understand these barriers and adapt policies to help facilitate access and benefit for all.

Fourthly, many public authorities only carry out assessments of equality impacts after the proposed policy has been decided upon or even adopted.⁴⁴ It is now settled jurisprudence that public authorities are 'not entitled to

⁴⁰ Peter Neill [2005] NIQB 66 and [2006] NICA 5

⁴¹ See, for example, the Department of Justice's consultation document on its draft Justice Bill, found at http://www.dojni.gov.uk/index/public-consultations/archive-consultations/justice_bill_eqia.pdf, and equality impact assessment and CAJ's associated responses, found at www.caj.org.uk.

⁴² Northern Ireland Court and Tribunals Service. Consultation on Section 75 Equality Impact Assessment of the Proposals on new Rules on Remuneration of Defence Representation in the Crown Court, para 6.5, found at <http://www.courtsni.gov.uk/NR/rdonlyres/541F7FC0-53CF-4E95-B7E2-B1909E0336CA/0/FINALCrownCourtRemunerationSection75240910.pdf>.

⁴³ See various CAJ responses to draft budget 2011-15 consultations.

⁴⁴ See CAJ response to draft budget 2011-15 and Justice Bill EQIA consultations, www.caj.org.uk.

formulate policy before any equality impact assessment... it is unlawful to adopt a policy contingent on an assessment.⁴⁵ This is based on ‘the vital principle that the impact of any proposed policy should be assessed and steps to obviate any adverse impact considered *before* the adoption and implementation of the proposed policy⁴⁶ (emphasis in original). Otherwise, the impact assessment would amount to ‘policy-based evidence rather than evidence-based policy.’⁴⁷

Finally, attempts to enforce the application of s75 through our local courts have been unsuccessful, due to a resistance from the public authorities involved, and a conservative reading of s75 by our local courts. We discussed the Neill judgment in our 2007 submission to the Committee.⁴⁸ Most recently, a judgment of our local high court⁴⁹ (‘Tasers’) found that, although the assessment of equality impacts was to be carried out after the adoption of a new policy, ‘a preparedness to enter into dialogue and to alter one’s position as a result of that dialogue’⁵⁰ was sufficient to discharge the s75 duty.

CAJ believes that this runs contrary to a long line of cases in England and Wales, including Court of Appeal decisions, which clearly set out the need to assess equality impacts in advance.⁵¹ In *R(C) v Secretary of State for Justice*, the Court of Appeal supported previous judgments that the assessment of equality impacts should be carried out ‘not as a rearguard action following a concluded decision, but as an essential preliminary to any such decision. Inattention to it is both unlawful and bad government.’⁵² The Northern Ireland high court’s judgment in *Tasers* does not seem to be consistent with this approach.

We are concerned that the lack of proper implementation of s75 is seriously limiting its ability to help ensure full and effective equality for national minorities.

⁴⁵ *Ibid*, at para 36.

⁴⁶ *Ibid*, at para 20.

⁴⁷ *R (Kaur and Shah) v London Borough of Ealing* [2008] EWHC 2062, at para 37.

⁴⁸ *Peter Neill* [2005] NIQB 66 and [2006] NICA 5.

⁴⁹ *Tasers* [2011] NIQB.

⁵⁰ *Ibid*, at para 37.

⁵¹ See also caselaw above.

⁵² *R(C) v Secretary of State for Justice* [2008] EWCA Civ 882, at para 49, quoting Sedley J, in *R(BAPIO) v SSHD* [2007] EWCA Civ. 1139, at para 3. See also Arden LJ in *R(Elias) v SSHD* [2006] 1 WLR 321 [274].

The UNCESCR supported this view in its last round of reporting on the UK. It was ‘concerned about the persistent levels of deprivation and inequality throughout Northern Ireland, despite the adoption of the Northern Ireland Equality Impact Assessment.’⁵³ It recommended ‘that the human rights framework, including the Equality Impact Assessment, be effectively implemented in Northern Ireland.. [to ensure] the development of adequate policies and targeted measures to promote substantive equality, provide for improved health care, as well as an increase in skills training and employment opportunities for young people and adequate housing programmes for the poor and, in particular, Catholic families.’⁵⁴

5. Employment and Housing

As noted above, inequalities remain for the Catholic community in Northern Ireland. We are also disappointed that, in the State Report, there is no information on national minorities’ position as regards employment and housing in Northern Ireland, particularly as UNCESCR is concerned by the persistent levels of deprivation and inequality throughout Northern Ireland. It has noted the ‘higher poverty levels among ethnic minorities, asylum seekers and migrants, older persons, single mothers, and persons with disabilities’⁵⁵ throughout the UK.

In relation to employment, the latest Labour Force Survey confirmed that Catholics continue to suffer higher economic inactivity rates than Protestants.⁵⁶ Similarly, the Northern Ireland Housing Executive statistics show that the number of individuals in housing stress in North Belfast has steadily increased from 1091 in 2005 to 1483 in 2009⁵⁷. Catholics remain in the majority on social housing waiting lists and are nearly three times more numerous in north Belfast.⁵⁸

⁵³ Concluding observations of the Committee on Economic, Social and Cultural Rights: United Kingdom, 12 June 2009, at para 31.

⁵⁴ Ibid.

⁵⁵ Concluding observations of the Committee on Economic, Social and Cultural Rights, June 2009, *supra*, at para 28.

⁵⁶ 2009 Labour Force Survey Religion Report, updated 2010, found at http://www.ofmdfmi.gov.uk/2009_lfs_religion_report_pdf

⁵⁷ Northern Ireland Housing Executive statistics, sent to Participation and Practice of Rights Project under Freedom of Information Request, 2009.

⁵⁸ Ibid.

We are confident that other Northern Irish NGOs will raise issues with the Committee in relation to the lack of full and effective equality for ethnic minorities in Northern Ireland, including Travellers.

Article 6

- 1. The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.*
- 2. The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.*

6. Relations between Northern Ireland's Main Communities

The Committee welcomed, in the Opinion, Northern Ireland's Shared Future policy⁵⁹ and asked 'the authorities to step up efforts to promote awareness, among the communities concerned, of the benefits of a more integrated approach to housing as a way of strengthening relations between Protestants and Catholics in Northern Ireland.'⁶⁰ Although CAJ supports the aim of better community relations in Northern Ireland, we have concerns regarding the approach of current integration policy and the effects it could have on equality (see our 2007 submission to the Committee relating to a 'Shared Future').

In July 2010, the Office of the First Minister and deputy First Minister ('OFMdFM') launched a public consultation on its new Cohesion, Sharing and Integration ('CSI') policy.⁶¹ CAJ is concerned that CSI does not place sufficient emphasis on the need for equality in establishing good relations. We have long maintained the importance of equality and human rights in addressing community relations and, in particular, our divided society in Northern Ireland.

The need for equality to underpin good relations has been recognised as far back as 1831, when de Tocqueville found prejudice to be an 'imagined

⁵⁹ The Opinion, *supra*, at para 146.

⁶⁰ The Opinion, *supra*, at para 150.

⁶¹ Consultation document can be found at

http://www.ofmdfmi.gov.uk/reformatted_final_print_version_csi_-_26.07.10.pdf.

inequality' which follows 'the real inequality produced by wealth and the law.'⁶² More recently, in 2009, Wilkinson and Pickett published *The Spirit Level*, which uses various statistics to show how inequality adversely affects various social relations. They state that 'we are less likely to empathize with those not seen as equals; material differences serve to divide us socially'.⁶³ In the context of Northern Ireland, McCrudden has stated that it is 'inequality, and the legacy of exclusion it has brought, which feeds the conflict from which everyone in Northern Ireland suffers.'⁶⁴

Although a key goal of CSI is to 'promote equality of opportunity and tackle disadvantage' (at 2.3), this could be at odds with more specific commitments such as the promotion of shared housing. As noted in the CSI document, 'fourteen of the fifteen most deprived areas in Belfast are highly segregated' (at 3.27). Therefore, if funding allocations are prioritised on the basis of shared spaces (see 3.6), the most disadvantaged areas are least likely to benefit from them. This would maintain or extend inequalities and social exclusion, which in turn could worsen community relations. Given the imbalance in waiting lists for social housing, prioritised investment in shared housing could also extend inequalities in this regard.

Furthermore, equality of opportunity may not be a sufficient aim to foster good relations. Where high levels of deprivation and social exclusion are experienced, individuals may not be able to take advantage of 'equality of opportunity'. For example, despite 'equality of opportunity' for all children to attend school, '[s]tatistics on educational achievement have indicated concerns about underachievement among working class pupils and in particular working class Protestant boys.'⁶⁵ 'For children from poor households, lower levels of educational attainment result in an ongoing cycle of deprivation.'⁶⁶ Unless measures are put into place to level the playing field, individuals may not be able to take advantage of any formal equality of opportunity that is achieved.

CAJ recommends that any future integration policy addresses the inequalities in our society. In particular, the emphasis on shared spaces without proper

⁶² Democracy in America, 2003 edition, at page 400.

⁶³ *The Spirit Level*, page 56.

⁶⁴ *Benchmarks for Change: Mainstreaming Fairness in the Governance of Northern Ireland*, February 1998.

⁶⁵ Equality Commission for Northern Ireland, *Statement on Key Inequalities in Northern Ireland*, 2007, page 7, at [http://www.equalityni.org/archive/pdf/Keyinequalities\(F\)1107.pdf](http://www.equalityni.org/archive/pdf/Keyinequalities(F)1107.pdf)

⁶⁶ *Ibid*, at page 3.

consideration of socio-economic inequalities, could inadvertently serve to weaken social cohesion. Fundamentally, CAJ is concerned that CSI is centred on the symptoms of social division, as opposed to its cause. We believe that a better understanding and treatment of the causes of social division would provide the best opportunity to achieve social cohesion and good community relations.⁶⁷

7. Education - Non-Christian Religions

CAJ is concerned that Northern Ireland has not taken effective measures in its education system to promote mutual respect and understanding of non-Christian religions. In fact, by law, all schools in Northern Ireland must have a Christian ethos,⁶⁸ which does not suggest 'a spirit of tolerance and intercultural dialogue.'

Furthermore, the core curriculum for religious education in Northern Ireland is Christian centred and, as noted in our 2007 submission to the Committee, only the four main Christian churches were invited to take part in a review of that curriculum in 2002. We believe that religious education classes should include reference to all major religions, which would show tolerance and respect to national minorities. Indeed, the UN Special Rapporteur on Religion and Belief has urged governments to 'pay specific attention to the contents of syllabuses on religious education, which ideally should aim to be all-embracing.'⁶⁹

Parents do have a right for their children to 'opt out' from religious education and collective worship in schools in Northern Ireland. However, pupils and their parents are often not aware of their opt-out rights⁷⁰. Furthermore, schools often do not provide alternative educational activities for pupils opting-out,⁷¹ which, we believe, amounts to an act of discrimination as a result of their religious identity, within the meaning of Article 6 FCNM. We recommend

⁶⁷ CAJ's full response to the CSI consultation can be found at www.caj.org.uk.

⁶⁸ Education and Libraries (Northern Ireland) Order 1986 (as amended), SR 1986/594, article 21.

⁶⁹ UN General Assembly (20 August 2007), "Interim Report of the Special Rapporteur on freedom of religion or belief", UN Doc A/62/280, paragraph 78.

⁷⁰ Mawhinney, A. and others (September 2010) *Opting Out of Religious Education: The Views of Young People from Minority Belief Backgrounds* (Belfast, Queens University); see also Richardson, N. (2007) "Rights and Religious Education in A Plural Northern Ireland", a paper presented at the Rights and Righteousness Conference on 1-2 November 2007 (Belfast: Northern Ireland Human Rights Commission).

⁷¹ *Ibid.*

that the core curriculum be reviewed and that, when pupils do opt-out of religious education, alternative instruction be provided.

8. Criminal Justice System

The administration of policing and justice was devolved to our local Executive in 2010. The Hillsborough Agreement facilitated this devolution, and recognised the need to ensure access to justice. It included as a ‘necessary provision’, the ‘[f]ull provision of adequate funding and other resources for legal services to the disadvantaged in society, ensuring equality of access to justice for all.’⁷² It is hoped that this will result in adequate provisions being put in place, to allow for full and effective equality for national minorities. However, CAJ has some concerns that this objective has not wholly been met.

8.1 Hate Crime

The Committee recommended in the Opinion that ‘[f]urther resources need to be devoted to identifying and prosecuting hate crime in Northern Ireland.’⁷³ Unfortunately, we do not believe that this has been achieved and still an insufficient number of hate crimes are identified and prosecuted.

In Northern Ireland for fiscal year 2009/10, there were 2,148 hate motivated crimes reported. Given that over half of crime is unreported, and research cites this as a particular challenge of hate motivated crime, the actual number of crimes per year could be double that reported. The above includes crimes motivated by race, religion or belief, sexual orientation, disability, transphobia and sectarianism.

While the total number of crimes motivated by racism, homophobia or religion/belief decreased from 2008/09 hate crime associated with sectarian motivation increased by 247 (+24.3%).⁷⁴ These figures, supplied by the PSNI, indicate a disturbingly low detection rate for religion/belief motivated hate crime which decreased from 11.4% to 6.7% (-4.8 percentage points) in 2009/10.

⁷² Hillsborough Agreement, at Section 1.7, found at http://www.nidirect.gov.uk/castle_final_agreement15__2_-3.pdf.

⁷³ The Opinion, *supra*, at para 130.

⁷⁴ PSNI Annual Statistical Report no. 3, Hate Incidents & Crimes, 1 April 2009 – 31 March 2010.

Hate motivated crime targets some of the most vulnerable groups in our society. The PSNI must continue to demonstrate a commitment to improving the clearance rate for hate motivated crime and ‘raise its game’ by building on local partnerships in the statutory and voluntary sector. By extension, cuts should not be made to Minority Liaison Officers and Hate Crime Investigators who work closely with minority groups providing a joined up approach between communities and the police with respect to hate crime.

In addition, CAJ believes that there is a key role to be played in addressing hate crime by criminal justice agencies. Unfortunately, the current Department of Justice consultation on a New Community Safety Strategy for Northern Ireland⁷⁵ does not address this need.

8.2 Counter-terrorism

A number of counter-terrorism measures have been created at the UK-wide level, sometimes without due regard for the specific situation in Northern Ireland or the lessons from the history of Northern Ireland. CAJ would echo the opinion voiced by UNCESCR that the government has not yet undertaken to ensure systematically that ‘counter-terrorism measures do not have a discriminatory effect on the enjoyment of the Covenant rights on certain groups in the State party, in particular ethnic and religious minorities’.⁷⁶

CAJ is concerned about the possible unfavourable impact that security procedures, in practice, may have on individuals or communities and is specifically concerned about the possible adverse implications that the implementation of an anti-terrorist campaign may have on ethnic minorities. As such, we have suggested that monitoring and evaluation mechanisms be clearly built in to such a strategy.

CAJ has long maintained that there is a tendency for anti-terrorism powers to be used disproportionately. This is particularly stark in relation to ‘stop and search’ powers, which have a disproportionate impact on minority

⁷⁵ Department of Justice. Building Safer, Shared and Confident Communities: a consultation on a new community safety strategy for Northern Ireland. January 2011.

http://www.dojni.gov.uk/index/public-consultations/current-consultations/building_safer_shared_and_confident_communities_consultation_paper.pdf

⁷⁶ Concluding observations of the Committee on Economic, Social and Cultural Rights, June 2009, *supra*, at para 17.

communities. Prior to its suspension, the use of section 44 of the Terrorism Act 2000 ('s44') had become part of day to day policing across the UK.

The suspension of s44 came as a result of the European Court of Human Rights' 2010 judgment that 'there is a clear risk of arbitrariness in the grant of such a broad discretion to the police officer.'⁷⁷ Although the case did not concern national minorities, the court noted that 'the risks of the discriminatory use of the powers against such persons is a very real consideration'.⁷⁸ This is alarming, given that the comparable section 21 and 24 Justice and Security (NI) Act 2007 ('s21'), which applies only to Northern Ireland, is still in force.

Unlike the Police and Criminal Evidence Act, which incorporated safeguards for suspects, s21 (like s44) does not require 'reasonable grounds' for suspicion and there are no criteria to be met. This allows the police to stop and search anyone without any reason. As there are no safeguards in place against abuse, both qualitative and quantitative research suggests that in Northern Ireland s21, like s44, could be applied in a way that does not comply with legislative intent and that it will be used as a 'tool of harassment'.

Therefore, we were encouraged by the government's recent announcement that s21 will be amended, through the Protection of Freedoms Bill.⁷⁹ We urge the government to ensure that sufficient safeguards are put in place, and we will follow the debate closely. For example, we are conscious that the '[p]owers of stop and search for the military... will not be amended.'⁸⁰ In the meantime, we urge the UK to suspend s21, given its current lack of safeguards, to ensure it cannot be used in a discriminatory manner against national minorities.

⁷⁷ Gillan and Quinton v UK, 4158/05 [2010] ECHR 28 (12 January 2010), at para 85, found at <http://www.bailii.org/eu/cases/ECHR/2010/28.html>.

⁷⁸ Ibid.

⁷⁹ See Written Ministerial Statement from the Northern Ireland Office, 9 February 2011, found at <http://www.nio.gov.uk/written-ministerial-statement-stop-and-search-powers-under-the-justice-and-security-northern-ireland-act-2007/media-detail.htm?newsID=17506><http://www.nio.gov.uk/written-ministerial-statement-stop-and-search-powers-under-the-justice-and-security-northern-ireland-act-2007/media-detail.htm?newsID=17506>

⁸⁰ Ibid.

8.3 Northern Ireland Prison Service ('NIPS')

We believe that NIPS does not achieve full and effective equality for prisoners belonging to national minorities. In particular, there is a lack of monitoring, access to religious services and diversity training.

Since 2002, there have been no less than 40 reports written in relation to the prison system in Northern Ireland, with hundreds of recommendations. It has been reported that an effective, comprehensive and regular monitoring scheme should be introduced covering prisoners' treatment, access to regime activities and services by religion or community background, ethnic origin, disability, age and nationality. In fact, the Criminal Justice Review ('CJR') in 2000 recommended that all elements of the criminal justice system undertake such equity monitoring.⁸¹

Where monitoring has taken place, there has been concern regarding Catholics and non-nationals in the prison system. The *Inside View* report states, for example, 'the current statistics still illustrate that the number of Catholics being adjudicated on is high and this needs further and ongoing monitoring and analysis.'⁸²

It would also appear that due consideration needs to be given to the growing non-national population. Complaints to the Prisoner Ombudsman suggest that significant problems exist in relation to application of policies and procedures affecting prisoners who do not have a good command of the English language.⁸³ Additionally, it is important that non-nationals are ensured interaction with others from their own country or those who speak their native language.

⁸¹ Specifically, the CJR states: 'we recommend that the Criminal Justice Board and its research sub-committee be tasked with developing and implementing a strategy for equity monitoring the criminal justice system, as it affects categories of people, in particular by community background, gender, ethnic origin, sexual orientation and disability, whilst ensuring that this is done in a way that does not compromise judicial independence.' Criminal Justice Review Group, *Review of the Criminal Justice System in Northern Ireland* (Belfast: Stationary Office Bookshop, 2000), para. 3.38.

⁸² Northern Ireland Prison Service, *The Inside View: A review of equality of opportunity of prisoners on the basis of religion, in relation to our s75 statutory duties*, May 2009.

⁸³ The Prisoner Ombudsman for Northern Ireland, *Annual Report April 2008 – March 2009*, June 2009.

The Northern Ireland Prison Rules⁸⁴ state that ‘all prisoners shall be allowed to practice their religion to the extent compatible with good order and discipline’ and that a spiritual representative will visit prisoners who are ‘sick, under restraint, or confined to a cell’ (rules 56 and 59). Nonetheless, numerous recommendations in recent reports on the prison system relate to the need for better access to spiritual representation and religious services for all prisoners. Complaints of this nature are, for example, noted in the Prisoner Ombudsman Annual Report.⁸⁵

In addition, many reports have mentioned the need for cultural awareness and subsequent training relating to the cultural differences of the Catholic and Protestant communities, Irish Travellers and foreign nationals.⁸⁶ Various reports have demonstrated the continued need for specific and general staff training needs in relation to diversity issues. This is particularly worrying given that this was a recommendation made by the CJR, and which NIPS maintains has already been ‘implemented.’⁸⁷ CAJ believes that such implementation should be an ongoing process, which needs to be updated as diversity issues change and expand over time.

It is extremely important that these issues are at the fore of the ‘programme for change’ presently under way within NIPS and that external scrutiny and oversight is maintained to ensure full implementation of FCNM.

Article 10

- 1. The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.*
- 2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to*

⁸⁴ The Prison and Young Offenders Centre Rules (Northern Ireland) 1995.

⁸⁵ The Prisoner Ombudsman for Northern Ireland, *Annual Report April 2008 – March 2009*, June 2009. The Prisoner Ombudsman for Northern Ireland, *Annual Report April 2009 – March 2010*, June 2010.

⁸⁶ For more specific information, please see the CAJ report which examines approximately 40 reports on the prison service. See: CAJ. *Prisons and Prisoners in Northern Ireland: Putting Human Rights at the Heart of Prison Reform*. 2010.

http://www.caj.org.uk/files/2011/01/17/prisons_report_web2.pdf

⁸⁷ *Ibid.*

use the minority language in relations between those persons and the administrative authorities.

- 3. The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.*

9. Minority Languages

In 2008, the Committee of Ministers of the Council of Europe ('Committee of Ministers') welcomed the 'government's commitments, enshrined in the *St Andrews Agreement of 2006, regarding Irish and Ulster Scots languages together with the related commitment of the Northern Ireland Executive to adopt a strategy to enhance, protect and develop the Irish and Ulster Scots languages in Northern Ireland.*'⁸⁸

However, it was also concerned that '[i]n Northern Ireland, there is a lack of clarity regarding the language rights of Irish speakers and further support is required for the Ulster Scots language, culture and heritage.'⁸⁹ As such, it recommended that the government 'pursue further existing initiatives to protect and enhance the development of the languages and cultures of the peoples of.. Northern Ireland.'⁹⁰ CAJ believes that the Executive has made some progress in this regard, but we have specific concerns as regards the use of the Irish language.

9.1 Irish Language

The Administration of Justice (Language) Act (Ireland) 1737 ('the 1737 Act') prohibits the use of any language other than English to be used as a 'working' language in the courts. This has been interpreted as a bar to using Irish in the court process.⁹¹ This is deeply problematic, given that, in the Good Friday /

⁸⁸ Committee of Ministers Resolution on the UK, 2008, found at http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_UK_en.pdf.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ In the Matter of an Application by Caoimhín Mac Giolla Catháin for Judicial Review, [2010] NICA 24, found at http://www.courtsni.gov.uk/NR/rdonlyres/F7D7F577-64B4-4265-9D87-3A57F77388F4/0/j_j_GIR7778Final.htm.

Belfast Agreement, the government recognises ‘the importance of respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland, the Irish language, Ulster-Scots and the languages of the various ethnic communities, all of which are part of the cultural wealth of the island of Ireland’.⁹²

CAJ believes that the 1737 Act is contrary to the government’s obligations under Articles 10 and 15 FCNM, and also the European Convention on Human Rights and the European Charter for Regional or Minority Languages (‘the Charter’). We were disappointed with a recent Court of Appeal decision, which held that ‘the imposition of a requirement that applications and proceedings in court proceedings should be in English does have the consequence of treating English speakers differently from non-English speakers... The different treatment, however, is manifestly necessary and proportionate in a democratic society.’⁹³

However, the courts are aware of the conflict with the Good Friday / Belfast Agreement and, in the same case at first instance, Treacy J quoted the Charter’s Committee of Experts by stating that ‘[t]here seems to be a contradiction between the 1737 Language Act and the Good Friday Agreement regarding the use of Irish in courts. However, the departments are currently receiving legal advice on this aspect and the Committee of Experts encourages the authorities to remove the obstacles to the use of Irish indicated by the 1737 Act’ (his emphasis).⁹⁴

The Inter-departmental Charter Implementation Group (regarding minority languages) has set up a subgroup, run by Northern Ireland Court and Tribunal Service (‘NICTS’), to consider how Irish might be used in the legal system in Northern Ireland. However, CAJ doubts that this group has been successful, given the lack of reference to the Irish language in NICTS’s recent consultation on In-court Interpretation Services.⁹⁵

⁹² Good Friday / Belfast Agreement, *supra*.

⁹³ In the Matter of an Application by Caoimhín Mac Giolla Catháin for Judicial Review, [2010] NICA 24, found at http://www.courtsni.gov.uk/NR/rdonlyres/F7D7F577-64B4-4265-9D87-3A57F77388F4/0/j_j_GIR7778Final.htm.

⁹⁴ In the Matter of an Application by Caoimhín Mac Giolla Catháin for Judicial Review, [2009] NIQB 66, found at http://www.courtsni.gov.uk/NR/rdonlyres/C7ADCB9F-94B9-45A3-A8FB-4EF995B1C52D/0/j_j_TRE7587Final.htm%20.

⁹⁵ NICT consultation document on Interpretation Services, found at <http://www.courtsni.gov.uk/NR/rdonlyres/1149F34E-1733-4750-A8CE-CB8EDF54EFC2/0/Consultationletter.pdf>.

By contrast, the CJR recommended that ‘consideration of the use of the Irish language in courts be taken forward in the wider context of the development of policy on the use of Irish in public life generally.’⁹⁶ The Department of Culture, Arts and Language (DCAL) website states that, as a result of the Charter, ‘[i]f Irish [language] users wish to speak to a non-Irish speaking Government official in Irish notice should be given so that an interpreter can be arranged, if this is possible’.⁹⁷ However, Irish can still not be used in the courts or with much of the administration in Northern Ireland.

UNESCO has noted that there is ‘still no protection in respect of the Irish language in Northern Ireland’⁹⁸ and recommended that the government adopt an Irish Language Act ‘with a view to preserving and promoting minority languages and cultural heritage’.⁹⁹ This follows on from the government’s commitment in the St Andrews Agreement to ‘introduce an Irish Language Act reflecting on the experience of Wales and Ireland and work with the incoming Executive to enhance and protect the development of the Irish language.’¹⁰⁰

This was also supported by the Committee of Ministers, which recommended the government ‘adopt and implement a comprehensive Irish language policy, preferably through the adoption of legislation’.¹⁰¹ Despite so many international calls for action, the Irish Language Act has not progressed and currently only an Irish Language Strategy is proposed by DCAL. We urge the Committee to encourage action in this regard.

Article 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

⁹⁶ Criminal Justice Review Group, Review of the Criminal Justice System in Northern Ireland (Belfast: Stationary Office Bookshop, 2000), para. 8.56.

⁹⁷ www.dcalni.gov.uk.

⁹⁸ Concluding observations of the Committee on Economic, Social and Cultural Rights, June 2009, *supra*, at para 37.

⁹⁹ *Ibid.*

¹⁰⁰ St Andrews Agreement, *supra*, at Annex B.

¹⁰¹ Recommendation RecChL(2010) 4 of the Committee of Ministers on the Application of the European Charter for Regional or Minority Languages by the United Kingdom. 21 April 2010.

10. Participation in Public Life

10.1 Police 50:50 Policy

The Committee recommended, in its 2007 Opinion, that the PSNI 'should continue its efforts to achieve a balanced representation of Catholic and Protestant officers'.¹⁰² However, as noted above, at section 4.3, the government has recently consulted on its intent to allow the Policy 50:50 Policy to lapse. CAJ regrets this approach, and we believe that it could prevent the effective participation of the Catholic community in the police force and policing in Northern Ireland.

We believe that the lapsing of the Police 50:50 Policy would lessen Catholic representation in the PSNI, which is already proportionately low. Currently, 29.38% PSNI officers are Catholic,¹⁰³ compared to the 43.76% Catholics in Northern Ireland, as recorded in the 2001 census.¹⁰⁴ Even when compared to the percentage of the Catholic community available for work at the last census, which was 42.7%¹⁰⁵, there is still a deficit of 13.32% to be bridged. Catholic representation among civilian staff and senior officers is even lower, at 18% and 16% respectively.¹⁰⁶

It is expected that, were the Police 50:50 Policy to end as expected, Catholic representation would decrease further, for five key reasons. First, the application rate to the PSNI from the Catholic community has been steadily decreasing since 2007.¹⁰⁷ Secondly, the relatively recent engagement by the republican community in policing means that recruitment from that section of the Catholic community (as advocated by Patten) will still be at a much less advanced stage.¹⁰⁸ Thirdly, there are marked differentials in the success rates of Catholic and non-Catholic applicants in the initial selection test,

¹⁰² The Opinion, *supra*, at para 247.

¹⁰³ See Police 50:50 Policy consultation document, *supra*.

¹⁰⁴ See 2001 census report at <http://www.nisranew.nisra.gov.uk/census/start.html>.

¹⁰⁵ It is further worth bearing in mind that the census figures are ten years old, and there is a possibility that this percentage could increase in the planned 2011 census.

¹⁰⁶ See Police 50:50 Policy consultation document, *supra*.

¹⁰⁷ See Police 50:50 Policy consultation document, *supra*, at Annex A.

¹⁰⁸ A New Beginning: Policing in Northern Ireland, the Report of the Independent Commission on Policing in Northern Ireland ('the Patten Report'), 1999, found at <http://cain.ulst.ac.uk/issues/police/patten/patten99.pdf>.

assessment centre and medical assessment (11% compared to 18% respectively).¹⁰⁹

Fourthly, we are concerned by the low retention rate of Catholic officers at the PSNI. Although we have limited data in this regard, the government has previously confirmed that ‘of the 99 officers appointed in the last five years since 4 November 2001, and who had since left, 26 were Protestant, 72 were Catholic and 1 was not determined.’¹¹⁰ Indeed, the Committee itself has noted the ‘higher abandonment rate among Catholics from the Police Service of Northern Ireland than among Protestants.’¹¹¹ Indeed, the lower retention and application rate is not surprising, given the increased residual terrorist threat to Catholic officers.¹¹² Finally, the impending cuts to public services has brought about a recruitment freeze in the public sector, including the PSNI.¹¹³

CAJ is concerned that the lack of Catholic representation would have negative impacts, not only within the PSNI, but throughout the community in Northern Ireland. Northern Ireland remains a very deeply divided society in which policing by consent remains of utmost importance. This consent is built by the legitimacy and confidence created by accountability and representation. To ignore this reality and adopt a context-blind approach risks undermining progress made. As noted by Patten, “if all communities see the police as their police, there will be a better, cooperative partnership between community and police, and therefore more effective policing.”¹¹⁴

Therefore, CAJ recommends that the Police 50:50 Policy continues until the PSNI is more representative of our community. If, as expected, the Police 50:50 Policy will lapse, we urge the Committee to recommend alternative measures are put in place to help ensure the effective participation of Catholics in public life.

¹⁰⁹ See PSNI Equality Impact Assessment on recruitment of police officers, 2007, at http://www.psni.police.uk/eqia_recruitment_full_report.pdf, and CAJ commentary at http://www.caj.org.uk/files/2000/01/03/S186_Commentary_on_Equality_Impact_Assessment_of_PSNI_Recruitment_April_2007.pdf.

¹¹⁰ Correspondence with CAJ, cited in CAJ’s Annual Report 2006/7, found at www.caj.org.uk.

¹¹¹ The Opinion, *supra*, at para 243.

¹¹² See, for example,

<http://www.telegraph.co.uk/news/uknews/northernireland/7931957/Dissident-republicans-target-security-forces-for-second-time-in-a-week.html>.

¹¹³ See, for example, <http://www.u.tv/News/Anger-at-PSNI-recruitment-freeze/91aee1e3-6fb1-4bfe-9b74-4c2d532b04f8>.

¹¹⁴ A New Beginning: Policing in Northern Ireland, the Report of the Independent Commission on Policing in Northern Ireland (‘the Patten Report’), 1999, *supra*, at para 14.3.

10.2 Northern Ireland Prison Service ('NIPS') workforce

In relation to the NIPS workforce, the Committee noted the 'number of Catholics employed in the prison service of Northern Ireland is reportedly particularly low.'¹¹⁵ CAJ can confirm that the low representation of Catholics in NIPS' workforce is still an issue of concern.

In 2008, Criminal Justice Inspection ('CJI') and HM Chief Inspector of Prisons jointly reported that despite the creation of the Equality & Diversity Committees there was 'a lack of clear central guidance [from NIPS] about equality and diversity.'¹¹⁶ According to the NIPS-appointed equality review team, the committees at the time of the inspection (autumn 2007) were 'largely ineffective, poorly attended and did not carry out detailed analysis of the differentials identified in the monitoring statistics nor take steps to address the differentials.'¹¹⁷

According to Robin Masefield, the then-Director of NIPS, Equality and Diversity Committees have since been rolled out in all prisons¹¹⁸ and NIPS has subsequently been commended for its Diversity Strategy and its work to improve its diversity policy. Masefield has said: "the difference is starting to be seen. For example, in the past two years.. the proportion of applications from Roman Catholics has increased very significantly."¹¹⁹ However, Masefield also acknowledged that staff turnover is 'very low', and so the increase does not have a significant overall impact.¹²⁰

¹¹⁵ The Opinion, at para 243.

¹¹⁶ Criminal Justice Inspection and HM Chief Inspector of Prisons, *Report on an announced inspection of Hydebank Wood Young Offender Centre 5 – 9 November 2007*, March 2008, para 3.67-3.68. HM Chief Inspector of Prisons and the Chief Inspector of Criminal Justice in Northern Ireland, *Report on an announced inspection of Ash House, Hydebank Wood, 29 October – 2 November 2007*, June 2008, para 3.43-3.44.

¹¹⁷ Northern Ireland Prison Service, *The Inside View: A review of equality of opportunity of prisoners on the basis of religion, in relation to our s75 statutory duties*, May 2009, para. 4.13.

¹¹⁸ Robin Masefield, 'Diversity and Equality in Government Conference' Diversity and Equality in Government Conference, London, 10 December 2009. Available at <http://www.equalityconference.co.uk/wp-content/uploads/Robin%20Masefield.pdf> . Last accessed 3 September 2010.

¹¹⁹ Northern Ireland Prison Service, Press Release: 'Prison Service Director Presents Diversity Message', 10 November 2009. Available at <http://www.niprisonservice.gov.uk/module.cfm/opt/1/area/News/page/news/caid/1/nid/591> Last accessed 3 September 2010.

¹²⁰ Robin Masefield, 'Diversity and Equality in Government Conference' Diversity and Equality in Government Conference, London, 10 December 2009. Available at <http://www.equalityconference.co.uk/wp-content/uploads/Robin%20Masefield.pdf> . Last

The Prison Review Team, established to conduct a review of the “conditions of detention, management and oversight of all prisons” noted complaints of discriminatory attitudes and approaches within the prison service and highlighted its unrepresentative nature. It stated that “[a]t present, among prison managers and staff as a whole, 10% are Catholic, and 22% are women. But these overall figures disguise some important variations. Only 8% of main grade officers are Catholic and only 17% are women; and only 12% of managers are women. However, among the most recently-recruited officer support grades, 25% are Catholic and 51% are women.”¹²¹

The CJI report on Prison Service Staff Training and Development recommended that ‘as part of its wider human resources strategy the NIPS should continue to review the imbalances which are present in its workforce and the potential role that training can play in addressing these.’¹²² Most recently, the Prison Review Team interim report recommended that ‘work should also be done to encourage applications from groups that are currently under-represented and to identify any unnecessary barriers that deter them from joining or remaining in the prison service.’¹²³

CAJ urges the Committee to endorse these various recommendations to help ensure the participation of Catholics in the NIPS workforce.

11. Participation in Economic Life

As noted above, Northern Ireland has a history of economic inequality suffered by the Catholic community. In 2005, the Northern Ireland Statistics and Research Agency’s Multiple Deprivation Measures found that 13 of the 20 most deprived areas in Northern Ireland were predominantly Catholic. Despite

accessed 3 September 2010. The Prison Service Pay Review Body also reported that ‘there was a major staff reduction programme between 1999 and 2001, but around 70 per cent of those who left were aged 50 or over. As a result, the Prison Service has a relatively young workforce which contributes to minimal turnover.’ The Body also reported that between 1993 and 2004 there had been no external recruitment of prison officers. Prison Service Pay Review Body *Second Report on Northern Ireland 2004*.

¹²¹ Pg 52, Review of the Northern Ireland Prison Service: Conditions, management and oversight of all prisons, Interim Report, February 2011. Available at: http://www.prisonreviewni.gov.uk/index/rwritten-representations/interim_report_february_2011.htm.

¹²² CJI, Prison Service Staff Training and Development, June 2009, at para 3.10.

¹²³ Review of the Northern Ireland Prison Service: Conditions, management and oversight of all prisons, Interim Report, February 2011.

five years of investment and government strategies, the most recent Multiple Deprivation Measures, from March 2010, show that the number of predominantly Catholic areas in the 20 most deprived has risen to 16 (80%).¹²⁴ CAJ is concerned that this trend will continue.

Given that we are entering a time of austerity, with swingeing cuts to public services and social projects, we are concerned that the most disadvantaged groups will suffer the most. This would exacerbate existing inequalities. Particularly due to the precedent of inequalities having widened in times of plenty, we are concerned that national minorities' participation in economic life will worsen further in the ongoing recession and public spending cuts.

12. Conclusion

Therefore, although the government may have made some progress in relation to the application of FCNM, we are concerned that many areas still require attention. We look forward to discussing these matters with the Committee's delegation in Belfast on 7 March 2011. Following our meeting, we will send the Committee a list of recommendations arising from this submission and our ensuing discussion.

¹²⁴http://www.nisra.gov.uk/deprivation/archive/Updateof2005Measures/NIMDM_2010_Statistics_Press_Release.pdf.

Annex A

KEY RECOMMENDATIONS

In order to promote the protection of national minorities in Northern Ireland, the Committee on the Administration of Justice recommends that the Advisory Committee urge the UK government to carry out the following:

1. Provide full information on the situation of national minorities in Northern Ireland when reporting to the Advisory Committee.
2. Define the scope of application of the Framework Convention on National Minorities without reference to s3(1) the Race Relations Act 1976, and include religious groups.

Article 3

3. Reflect fully its commitment to the freedom of the people in Northern Ireland to identify themselves as British, Irish or both.
4. Continue fair employment monitoring to help achieve full and effective equality in Northern Ireland's workforce.

Article 4

5. Reconsider the Northern Ireland Human Rights Commission's advice for a Bill of Rights for Northern Ireland and not subsume it into a 'national' debate.
6. Advance the debate and legislative action for a Single Equality Bill, to ensure a more complete and less complex, piecemeal and inconsistent array of anti-discrimination and equality legislation.
7. Fully comply with European equality directives in Northern Ireland.
8. Promote the full and substantive application of s75 Northern Ireland Act 1998, so that policy makers have due regard to the promotion of equality of opportunity for national minorities and beyond.

Article 6

9. Address societal inequalities within any integration policy on community cohesion.
10. Review the core curriculum on religious education and ensure that, when pupils opt-out, alternative instruction be provided.
11. Work towards identifying and prosecuting a greater number of hate crimes occurring against national minorities.
12. Suspend the 'stop and search' powers in s21 and 24 Justice and Security (NI) Act 2007, pending its review in the Protection of Freedoms Bill, to ensure it cannot be used in a discriminatory manner against national minorities.
13. Improve monitoring, access to religious services and diversity training in the Northern Ireland Prison Service and address the low representation of Catholics in its workforce.

Article 10

14. Repeal the Administration of Justice (Language) Act (Ireland) 1737 and introduce an Irish Language Act.

Article 15

15. Continue the Police 50:50 recruitment policy and, if not, introduce alternative measures to help ensure the effective participation of Catholics in the Police Service of Northern Ireland.
16. Address economic inequalities for national minorities and ensure they do not worsen, given the swingeing cuts to public services and social projects.