

CAJ's submission no. S377

CAJ's Submission to the Draft Programme for Government, 2011-15

February 2012

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 such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch 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, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON. The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

**Submission to the Office of the First Minister and Deputy First Minister,
'Draft Programme for Government' 2011-15 Consultation February 2012**

Committee on the Administration of Justice ('CAJ')

CAJ is an independent human rights organization 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.

The draft Programme for Government (PfG) 2011 – 2015 was published by the First Minister and deputy First Minister on 17th November 2011. The PfG forms an integral part of a suite of three documents the other two being the Economic Strategy 2012–2030 and an Investment Strategy. The draft PfG contains five main priority areas: growing a sustainable economy and investing in the future; creating opportunities, tackling disadvantage and improving health and well being; protecting our people, the environment and creating safer communities; building a strong and shared community and delivery of high quality efficient public services.

Executive Summary

CAJ wishes to draw attention to commitments which engage human rights, many of which derive from the Belfast/Good Friday Agreement and the various Agreements making up the peace settlement which followed it, which we would expect to see reflected in the PfG. In summary the areas we would like to see addressed further to the draft PfG include:

- explicit inclusion of reference to single equality legislation, particularly given international commitments;
- addressing the gaps in provisions to meet commitments to reducing unemployment, tackling the employment differential, re-integration of ex-prisoners, and general integration and equality strategies;
- gender equality commitments specifically in relation to affirming the rights of women to full and equal political participation;
- clarity on the implementation of the Youth Justice Review;
- clarity on the implementation of prison reform, including provision for a women's prison;
- the explicit inclusion of commitments for the Irish language and Ulster Scots further to the St Andrews Agreement;
- clarity on 'freedom from sectarian harassment' and taking forward reforms to parades legislation;
- the inclusion of mechanisms for formally considering and implementing recommendations from UN and Council of Europe treaty bodies, as well as outstanding matters from peace settlement agreements; and
- the correct sequencing of the PfG consultation and its equality impact assessment;

Introduction: human rights commitments and the Agreements

1. CAJ has a general concern there are a number of human rights (including equality) commitments from the various Agreements making up the peace settlement (*Belfast/Good Friday Agreement 1998, Weston Park 2001, The Joint Declaration by the British and Irish Governments April 2003, the St. Andrews Agreement 2006 and the Agreement at Hillsborough Castle 2010*(the Agreements')) which have not been taken forward or which have been rolled back.
2. With the exception of the Sinn Féin-DUP Agreement at Hillsborough Castle, and the multiparty section of the Belfast/Good Friday Agreement, the other documents are international Agreements between the two sovereign governments of the UK and Ireland. In accordance with the 1969 Vienna Convention on the Law of Treaties commitments in treaties must be interpreted and performed in good faith. Whilst complying with the terms of treaties is an obligation on the state, and hence ultimately a matter for the sovereign governments, there is provision for implementation by devolved institutions, such as the NI Executive, on matters which fall within its competence. By virtue of the Northern Ireland Act 1998, the UK has devolved 'observing and implementing international obligations'¹ to Northern Ireland. In addition, the UK's Memorandum of Understanding on Devolution provides for Northern Ireland to fulfill some treaty obligations.² The monitoring of and reporting on international obligations remains the responsibility of the UK government³ and the UK's Memorandum of Understanding on Devolution recognises that final responsibility for such matters rests with the UK.⁴
3. Whilst the majority of unimplemented or rolled back commitments we have identified in fact fall to the British Government, there are a number which fall within the competence of the devolved institutions. This submission therefore focuses on a limited number of commitments found within the international Agreements and the Hillsborough Agreement, which CAJ would expect to be reflected in the PfG.

Single equality legislation

4. The Joint Declaration by the British and Irish Governments 2003, references the Single Equality Bill as a vehicle to give legislative effect to rights contained within the Belfast/Good Friday Agreement. The St. Andrews Agreement 2006 reaffirmed the commitment to a Single Equality

¹ Schedule 2 para 3(c) Northern Ireland Act 1998.

² 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>.

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

⁴ Memorandum of Understanding on Devolution: D Concordat on International Relations – Northern Ireland, at para D3.4, and Common Annex, at para D4.3.

Bill and provided (pre-devolution) that the British government “will work rapidly to make the necessary preparations so that legislation can be taken forward by an incoming Executive at an early date”⁵. A good faith interpretation of these internationally agreed commitments is that a Single Equality Bill would have been taken forward as a matter of priority by the devolved institutions. Whilst the preparatory work was under taken it appears that no work is currently being undertaken, or even planned, to prepare such legislation by the NI Executive.

5. It is difficult to see the outworking of an Equality and Good Relations Programme that does not include legislative reform which engages treaty-based commitments. Indeed, the absence of the Single Equality Bill from the draft PfG is even more striking given the numerous treaty body statements that, in order to comply with international obligations, comprehensive and consistent equality legislation should be introduced.⁶ Just last year, the UN Committee on the Elimination of Racial Discrimination (‘CERD’) recommended that immediate steps are taken to ensure that a single equality law is adopted in Northern Ireland⁷ and the Advisory Committee on the Council of Europe’s Framework Convention on National Minorities (‘FCNM’) recommended that the “ authorities responsible for the implementation of the Belfast/Good Friday Agreement and the St Andrews Agreement should also step up efforts to adopt a Single Equality Act” for Northern Ireland.⁸

Other substantive equality and integration measures

6. The Belfast/Good Friday Agreement provides for the UK to implement: “a range of measures aimed at combating unemployment and progressively eliminating the differential in unemployment rates between the two communities by targeting objective need.”⁹ The parties to this Agreement also affirm their commitments to a number of specific rights including:
 - the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity;
 - the right to freely choose one’s place of residence;
 - the right to freedom from sectarian harassment; and
 - the right of women to full and equal political participation.¹⁰
7. In reference to reconciliation the parties also agreed that “an essential aspect of the reconciliation process is the promotion of a culture of tolerance at every level of society, including initiatives to facilitate and

⁵ St Andrews Agreement 2006, Annex B.

⁶ See, for example, para 63, ACFC/OP/II(2007)003, where the Advisory Committee on FCNM recommended that ‘existing inconsistencies in anti-discrimination legislation are removed’ and para 29, CERD/C/63/CO/11, the UN Committee recommended the introduction of ‘a single comprehensive law, consolidating primary and secondary legislation’ (2003).

⁷ CERD/C/GBR/CO/18-20, at para 19.

⁸ ACFC/OP/III(2011)006, at para 128.

⁹ Rights, safeguards and Equality of Opportunity, paragraph 2(iii)

¹⁰ Human Rights, Paragraph 1.

encourage integrated education and mixed housing.”¹¹ In the 2003 UK-Ireland Joint Declaration both governments recognised the importance, among other matters, of “tackling sectarianism and addressing segregation” and recognized:

...many disadvantaged areas, including areas which are predominantly loyalist or nationalist, which have suffered the worst impact of the violence and alienation of the past, have not experienced a proportionate peace dividend. They recognise that unless the economic and social profile of these communities is positively transformed, the reality of a fully peaceful and healthy society will not be complete.¹²

8. In addition the British government reaffirmed in the UK-Ireland Joint Declaration its Belfast/Good Friday Agreement commitment to measures to combat unemployment and progressively eliminating the employment differential, as well as ‘encouraging’ the devolved administration to accelerate work on this issue.¹³ St Andrew’s Agreement in 2006 included a fresh commitment from the British government to actively promote human rights and equality, along with specific commitments to publish an Anti-Poverty Strategy to “tackle deprivation in both rural and urban communities based on objective need and to remedy patterns of deprivation” envisaging this work would be taken forward by the NI Executive. St Andrew’s also provided for measures to enhance the reintegration of ex-prisoners.¹⁴
9. The UN Committee on Economic, Social and Cultural Rights (CESCR) is concerned by the persistent levels of deprivation and inequality throughout Northern Ireland. It has also noted the “higher poverty levels among ethnic minorities, asylum seekers and migrants, older persons, single mothers, and persons with disabilities” throughout the UK.¹⁵ CESCR is “concerned about the persistent levels of deprivation and inequality throughout Northern Ireland, despite the adoption of the Northern Ireland Equality Impact Assessment.”¹⁶
10. Notwithstanding treaty based obligations being the ultimate responsibility of the state party, CAJ notes that many of these areas are now within the competence and responsibility of the Assembly, or it was explicitly envisaged would be taken forward by the Assembly. CAJ would therefore expect to see explicit reference on measures to take them forward within the PfG.

¹¹ Rights, safeguards and Equality of Opportunity, Paragraph 13.

¹² Joint Declaration of the British and Irish Governments, 2003, paragraphs 27-28.

¹³ Joint Declaration of the British and Irish Governments, 2003, annex 3 Paragraph 9.

¹⁴ St Andrew’s Agreement 2006, Annex B.

¹⁵ Concluding observations of the Committee on Economic, Social and Cultural

Rights, June 2009, *supra*, at para 28.

¹⁶ Concluding observations of the Committee on Economic, Social and Cultural

Rights: United Kingdom, 12 June 2009, at para 31.

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11. CAJ notes that some of the above areas fall within the overarching priorities of the draft PfG, in particular, priority 1 in relation to job 'promotion', priority 2 in relation to tackling disadvantage, and priority 4 in relation to better relations between communities. CAJ does note however a number of gaps in relation to the specific commitments entered into. In particular there is no reference or commitments to measures to tackle the employment differential, no specific commitments to reduce unemployment, and no reference to re-integration of ex-prisoners or to tackling sectarianism.
12. CAJ welcomes the explicit commitment to finalise the Cohesion, Sharing and Integration (CSI) Strategy under priority 4. CAJ considers that CSI would have the potential to address a number of the above matters if many of the issues we outlined in our consultation response were taken into consideration in the final CSI strategy.¹⁷ CAJ therefore urges that this document be finalised as soon as possible if it is to be used as a 'building block' to inform key commitments, and milestones/outputs for this PfG.
13. However, CAJ notes there are no 'key commitments' to overarching equality strategies in the draft PfG with key strategies such as the racial equality strategy, referenced only as 'building blocks'. In particular there is no commitment to the Sexual Orientation Strategy which was committed to in the draft CSI strategy. A 'Sexual Orientation Action Plan' is referenced as a 'building block'. CAJ is concerned that the strategy for sexual orientation may transpire to be little more than guidance to the existing legislation rather than a strategy *per se*, and requests clarification on this, including a commitment to the Sexual Orientation Strategy in the PfG.
14. The current Gender Equality Cross-Departmental Action Plan 2008–2011 cycle, which is necessary to outwork the provisions of the Gender Equality Strategy 2006–2016, has ended and yet both a further action plan and the mid-term Gender Equality Strategy Interim Report (2010) remain outstanding. CAJ urges that these be completed if the Gender Equality Strategy is a 'building block' being used to inform the PfG 2011–2015 cycle.
15. CAJ notes that one of the prioritised areas of the existing Gender Equality Strategy is 'representation in public life/decision making'.¹⁸ As mentioned above, the parties to the Belfast/Good Friday Agreement affirmed the rights of women to full and equal political participation.¹⁹ One of the key human rights mechanisms in a post-conflict society is the application of UN Security Council Resolution 1325, on Women, Peace and Security.²⁰

¹⁷ See CAJ's Submission no. S. 269, CAJ's response to OFMdfM consultation on Cohesion, Sharing and Integration, November 2010 at www.caj.org.uk including particular particularly in referent to equality, most-at-risk groups and issues of housing and education.

¹⁸ Gender Equality Strategy, A Strategic Framework for action to promote gender equality for women and men, 2006 – 2016, OFMdfM at www.ofmdfmi.gov.uk/gender-equality

¹⁹ 1998 Agreement: Rights, safeguards and equality of opportunity paragraph 1.

²⁰ United Nations Resolution, 1325, Women, Peace and Security, S/RES/1325 (2000)

UNSCR 1325 urges UN Member States to ensure “the increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict.”²¹ CAJ sees clear relevance in the application of UNSCR 1325 to Northern Ireland. This is the view supported by the UN Committee on the Elimination of Discrimination Against Women (CEDAW).²² CAJ would like to see commitment within the PfG for the NI administration to press the British government to apply UNSCR 1325 to Northern Ireland, and accordingly for an Action Plan to take forward its provisions within this jurisdiction.

Youth Justice

16. The Hillsborough Agreement provided for a “[r]eview of how children and young people are processed at all stages of the criminal justice system, including detention, to ensure compliance with international obligations and best practice.”²³ This was then taken forward through the Youth Justice Review.
17. CAJ suggests that the position in relation to implementation of the recommendations of the Youth Justice Review be clarified in the PfG. As part of a commitment to reduce the level of serious crime a milestone/output identified is to implement “90% of agreed Youth Justice Review recommendations by 2013/2014.” Firstly, we would ask why the figure of 90% was chosen for the implementation of recommendations and what evidence base supported this. CAJ presumes that the phrase ‘agreed’ refers to the process of public consultation in relation to the Youth Justice Review’s report, but this could be clarified.
18. Secondly we draw attention to the emphasis placed in the Youth Justice Review of cooperation between government departments, and would suggest this is explicitly reflected in the PfG.
19. Finally, we would query the appropriateness of this milestone/output as part of the commitment to reduce the level of serious crime. Whilst it is undoubtedly true that children and young people are capable of, and have committed, serious crimes the Youth Justice Review report acknowledged that offending by children tends to be less serious than adults, with common offences including criminal damage, theft and common assault. Therefore, the reference to the Youth Justice Review’s recommendations in this context seems misplaced. (*Priority 3, draft PfG*)
20. CAJ notes the commitment within the PfG to improve community safety by tackling anti-social behaviour. CAJ would urge that as part of this

²¹ *Ibid*, para 1.

²² In 2008, in the context of its “particular relevance to Northern Ireland”, expressed regret at the lack of information provided by the UK as the implementation of UNHSCR 1325 and called for the full implementation of UNSCR 1325 to Northern Ireland see CEDAW (Concluding Observations on the UK) UN DOC CEDAW/C/UK/CO/6 paragraphs 254-5.

²³ Agreement at Hillsborough Castle 2010, page 7.

commitment to tackle anti-social behaviour, consideration is given to repealing Anti-Social Behaviour Orders (ASBOs). As we stated in our submission to the consultation on the report of the Youth Justice Review, we consider that the Review's failure to examine the use of ASBOs was a major oversight. The Commitment made under the Hillsborough Agreement was for a review of how children and young people are processed at all stages of the criminal justice system. CAJ believes that ASBOs should have fallen squarely within such a review, as breach of an ASBO is a criminal offence that may result in a sentence of imprisonment. We would urge that the use of ASBOs be reviewed to fully reflect the commitment made under the Hillsborough Agreement. (*Priority 3, draft PfG*)

Prison Reform

21. The Hillsborough Agreement provides for "[a] review of the conditions of detention, management and oversight of all prisons" and "[c]onsideration of a women's prison, which is fit for purpose and meets international obligations and best practice."²⁴
22. CAJ would welcome clarity in relation to the commitment made in the draft PfG to reform and modernise the prison service. We note again that a milestone/output under this commitment is to implement 90% of the recommendations contained in the Prison Review Action Plan within the agreed timescales. Firstly, CAJ would like clarity as to whether the Prison Review Action Plan has already been completed or is still being drafted. We would urge that stakeholders be allowed to feed into the drafting of such an action plan, so that it can fully achieve the level of change that is required in the prison system. We would suggest that consideration be given to the words of the Prison Review Team in their final report, where they state that their recommendations for reform are "a whole and inter-dependent package."²⁵ CAJ is confident that the Department of Justice in drafting a Prison Review Action Plan will be cognizant of the need not to view the process of change that is required in the prison system in a piecemeal or incremental way. Secondly, we would query why the figure of 90% was chosen for implementation for the reasons outlined above. (*Priority 4, draft PfG*)
23. A further commitment under the Hillsborough Agreement was that consideration would be given to a women's prison, which is fit for purpose and meets international obligations and best practice and as was called for in the last CEDAW review.²⁶ As CAJ stated in our 2010 report on the prison system in Northern Ireland, a separate facility is required and has

²⁴ Agreement at Hillsborough Castle 2010, page 7.

²⁵ 'Review of the Northern Ireland Prison Service: Conditions, management and oversight of all prisons' Prison Review Team Final Report October 2011, p. 5

²⁶ Para. 20, Concluding Observations of the Committee on the Elimination of Discrimination against Women: United Kingdom and Northern Ireland, 18 July 2008, CEDAW/C/GBR/CO/6, p. 6.

been recommended many times.²⁷ The most recent call for a separate facility for women has come from the Prison Review Team who recommended that a new, small facility should be built for women prisoners and that Hydebank Wood is an entirely unsuitable environment for them. As part of the commitment within the PfG to reform and modernize the prison service CAJ would welcome clarity as to whether consideration of a women's prison will form part of this process. Given the repeated recommendations that a separate facility be constructed for women, we would urge that it does. (*Priority 4, draft PfG*)

Minority Language Rights

24. The St. Andrews Agreement 2006 commits the British Government to legislate for the Irish language. St Andrew's also led to statutory duties being placed on the Executive to introduce strategies for the Irish language and Ulster Scots. Such matters have been heavily commented on by international human rights treaty bodies with calls for their implementation at United Nations and Council of Europe levels.²⁸
25. There is no reference in the draft PfG to Irish language legislation. The PfG should explain whether it intends this undertaking, which engages treaty based commitments, to be taken forward by the devolved institution or referred to the British government for implementation.
26. Despite constituting legal obligations under domestic law²⁹ the duties to introduce strategies for the Irish language and Ulster Scots are not referenced as commitments within the draft PfG, but only as 'building blocks', nor hence are their targets for their introduction. This should be addressed in the final PfG.

Parades legislation

27. The St Andrew's Agreement provided for the Strategic Review in Parading (the Ashdown Review) which recommended a new decision-making framework on parades should be explicitly based around the European Convention on Human Rights (ECHR) and the "right to freedom from sectarian harassment" affirmed in the Belfast/Good Friday Agreement.

²⁷ 'Prisons and Prisoners in Northern Ireland – Putting Human Rights at the Heart of Prison Reform' CAJ December 2010

²⁸ For example see Concluding Observations of the Committee on the Economic, Social and Cultural Rights, 12 June 2009, E/C.12/GBR/CO/5, p. 10 at para 97. European Charter on Regional or Minority Languages, 3rd Monitoring report on the UK (ECRML(2010)4) , In 2011, the Framework Convention for National Minorities (FCNM) Advisory Committee stated urged "the responsible authorities at all levels to take resolute measures to protect and implement more effectively the language rights of persons belonging to the Irish-speaking community. To this effect, they should develop new, comprehensive legislation, in line with the commitments taken in the St Andrews Agreement and their obligations under the Framework Convention" (ACFC/OP/III(2011)006, at para 149).

²⁹ Northern Ireland (St Andrews Agreement) Act 200, section 15.

Section 2 of the Hillsborough Agreement, which also contained explicit reference to “rights for everyone to be free from sectarian harassment”, as a key principle, was followed by legislative proposals covering matters such as the decision making criteria on parades, which, it was subsequently clarified, were to be based on the ECHR.

28. Controversial proposals to change the decision-making processes on parades and extend regulation to other forms of public assembly, derailed this process and in the end no legislation was introduced to the Assembly. However it is not clear whether the issue of reforming the decision making criteria on parades³⁰ to more explicitly reflect the ECHR and freedom from sectarian harassment will still be taken forward. This could be clarified in the PfG.

Mechanisms to implement international commitments within the competency of the NI Executive

29. CAJ welcomes the fact that the draft PfG acknowledges the role of international human rights obligations by including reference to the UN Convention and the Rights of the Child (CRC) and the UN Convention on the Rights of Persons with Disabilities (CRPD).
30. CAJ notes that, under the Hillsborough Agreement, a commitment was made by the First and deputy First Ministers to review and take forward outstanding matters from the St Andrew’s Agreement. A number of commitments remain unimplemented but there is no reference to this work being taken forward in the draft PfG. CAJ also notes the mixed record of the NI Executive into contributing to UK treaty reports to the UN and Council of Europe. CAJ would urge inclusion in the PfG of mechanisms and targets for formally considering and implementing recommendations from such treaty bodies, as well as outstanding matters from the Agreements, which fall within the competence of the devolved institutions.

The PfG consultation and its equality impact assessment

31. On a more general note CAJ is concerned about the overall *ad hoc* approach to the PfG and does not find it to be a user-friendly document. At a minimum, a basic programme model includes performance indicators that are specific, measurable, achievable, realistic and time bound, having clear outcomes and impacts in parallel to a reflective budget line, with clearly identifiable resources. This simple model applies to all programming including human rights and equality programming. CAJ urges that the final PfG include these along with corresponding departmental business plans.

³⁰ Currently set out in the Public Processions (Northern Ireland) Act 1998.

32. Finally, we are concerned that the draft PfG, which will impact widely on many equality groups, has not been informed by an equality impact assessment ('EQIA'). The current consultation on a draft EQIA at a Strategic Level for the draft PFG was released nearly two months after the publication of the draft PfG. This suggests that the draft EQIA was drafted *after* the draft PfG, and so could not inform the proposals contained in the draft PfG. Caselaw in Great Britain³¹ has underlined the need for advance consideration of the promotion of equality of opportunity,³² as opposed to 'rearguard action.'³³ The courts have warned that the "duty must be fulfilled before and at the time that a particular policy is being considered by the public authority in question. It involves a conscious approach and state of mind...Attempts to justify a decision as being consistent with the exercise of the duty when it was not, in fact, considered before the decision, are not enough to discharge the duty."³⁴

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³¹ 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 (now s149 Equality Act 2010).

³² R (Elias) v Secretary of State for Defence [2006] WLR 321, [2006] EWCA Civ 1293.

³³ R (BAPF and Another) v Sec of State for the Home Department and for Health, *supra*.

³⁴ Brown [2008] EWHC 3158, para 92, and confirmed in Domb [2009] EWCA Civ 941 and many other cases.