

**Committee on the Administration of Justice ('CAJ')'s
Submission No. S401**

**Briefing Paper to UN Special Rapporteur on Freedom of
Peaceful Assembly & Association,
Mr. Maina Kiai, January 2013**

About CAJ

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.

This paper is presented to Special Rapporteur Mr. Maina Kiai, on occasion of his visit to Belfast on Friday 18th January 2013.

Present context for freedom of assembly (Article 21 ICCPR)

The context of freedom of assembly at this time is dominated by the street protests which have been taking place following decision in late 2012 of the elected body of the local authority, Belfast City Council, to reduce the number of days it flies the UK Union Flag. This decision has been followed by a substantive number of Loyalist¹ protests in Belfast and beyond. There has also been a significant amount of related public disorder, the police response to which has included plastic bullets and use of dogs. There have also been related attacks on and threats directed at the police, Irish nationalist/Catholic areas and elected representatives.

Whilst in recent weeks this has been reported extensively in the international press prior to this over the last year significant attention has once again been on the long term issue of the legal framework for regulating parades by the Protestant Loyal Orders and counter protests to them. Under the terms of the Public Processions (NI) Act 1998 decisions on restrictions on parades and counter protests are vested in an independent body, the Parades Commission, rather than the Police.

¹ Loyalist –refers to loyalty to the British Crown.
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In 2010 an Agreement between the two largest political parties in the Northern Ireland Assembly² resolved to replace the Parades Commission and modify the decision making criteria regulating parades.³ Resultant draft legislation was published in 2010.⁴ There were significant concerns with the bill not least the proposal to extend lengthy parade notification requirements to most other forms of public assembly. However the bill could have amended the criterion in the 1998 Act on which the Parades Commission makes its decisions on parade restrictions to bring them more explicitly in line with the human rights framework on freedom of assembly, and in particular Article 11(2) of the European Convention on Human Rights (ECHR). The parties to the Hillsborough Agreement had also committed to incorporating the “right for everyone to be free from sectarian harassment”, which is part of the Belfast/Good Friday Agreement, into the framework. Ultimately however the legislation was not proceeded with.⁵

Summary of contemporaneous issues:

- The main concerns CAJ has in relation to the policing of the current protests relate to the use of plastic bullets (‘AEPs’) to which CAJ has a long standing opposition; CAJ is also concerned about incidents involving the use of police dogs on protesters, we have also heard several allegations of gendered verbal and physical abuse against protestors;
- The current parades regulation framework applies to all public processions with very limited exemptions (e.g. funerals); issues have arisen, including in relation to the present protests, as to application to persons who are assembling together and walking to and from the location of a static protest which leads to essentially an unlawful procession and the potential for action to be taken *en mass* against participants;
- A further question where there is an apparent lack of legal certainty is to when it is permitted for a protest to block a public road or footpath and when police and prosecutors will take action against protestors;

² The Democratic Unionist Party and Sinn Féin.

³ Agreement at Hillsborough Castle 5 February 2010, Section 2.

⁴ draft Public Assemblies, Parades and Protests Bill 2010.

⁵ For a full chronology see the July 2011 ‘Parades and Counter-Protests’ briefing paper by the Northern Ireland Human Rights Commission at:

<http://www.nihrc.org/documents/advice-to-government/2011/parades-and-counter-protests-consolidation-august-2011.pdf>

- The independent body, the Parades Commission, has been retained. However, the decision-making legislation on parades still does not explicitly reflect an ECHR-centred human rights framework and defers essentially to public order considerations. An ECHR centred framework, under provisions protecting the 'rights of others' could incorporate the provision for freedom from sectarian expression and the related prohibition on advocacy of hatred under article 20 (2) ICCPR;

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