

## **CAJ's submission no. S443**

**CAJ's Submission to the Department of Culture, Arts and Leisure  
consultation on Tograí faoi choinne Bille Gaeilge  
(Proposals for an Irish Language Bill)  
May 2015**

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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 welcomes the opportunity to respond to the February 2015 Department of Culture, Arts and Leisure (DCAL) consultation on the Irish language bill. CAJ responded to two previous consultations on the legislation in 2007.<sup>1</sup>

### **International obligations to legislate to protect Irish**

The treaty-based commitment to legislate for the Irish language is provided for in the bilateral (UK-Ireland) St Andrews Agreement 2006. This states that:

The [British] Government will 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.<sup>2</sup>

CAJ has been concerned for some time that this and other human rights provisions committed to in international instruments as part of the peace settlement have not been implemented by the state party.<sup>3</sup>

CAJ welcomes that the consultation document makes reference to relevant international human rights standards. Legislating for the Irish language also engages the UK's human rights commitments to the United Nations and Council of Europe. A succession of oversight committees of treaties the UK is party to have called for the implementation of the Irish language Act.

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<sup>1</sup> S188a CAJ *Response to consultation paper on Irish Language Legislation for Northern Ireland*, March 2007; and S188b *Submission from the Committee on the Administration of Justice (CAJ) on second consultation on Irish language legislation for Northern Ireland*, June 2007.

<sup>2</sup> St Andrews Agreement, 2006; Annex B.

<sup>3</sup> See CAJ '*Mapping the Rollback? Human Rights Provisions of the Belfast/Good Friday Agreement 15 years on*' Report of a conference held in the Great Hall, Queens University Belfast, 26 April 2013 (November 2013).

In 2009 the United Nations Committee for Social, Economic and Cultural Rights expressed concern that the Irish Language Act had not been legislated for. The UN Committee contrasted the more favourable positions in Wales and Scotland and advised that in relation to compliance with duties under the UN Covenant on Social, Economic and Cultural Rights (ICESCR) that:

...the State party, or the devolved administration in Northern Ireland, adopt an Irish Language Act with a view to preserving and promoting minority languages and cultural heritage..."<sup>4</sup>

In 2010 the Council of Europe assessed UK compliance with its commitments under the European Charter for Minority Languages. The Committee of Experts (COMEX) who oversee compliance with the Charter have urged the UK to legislate to promote and protect the Irish language. COMEX held that legislation was:

...needed to protect and promote the Irish language in Northern Ireland, as is the case for Welsh in Wales and Scottish Gaelic in Scotland. Furthermore the Committee of Experts agrees with the Northern Ireland Human Rights Commission that a legislative basis is even more important in the environment of political conflict as a means of achieving reconciliation.<sup>5</sup>

COMEX noted that it was unlikely legislation to protect Irish would be passed by the Assembly given the need for consensus with unionist and nationalist parties, but that the Act could instead be passed by Westminster given its parallel legislative competence.<sup>6</sup>

In 2011 another Council of Europe treaty body, the Advisory Committee on the Framework Convention for National Minorities (FCNM), included the following provision among only three 'Issues for Immediate Action' by the UK to ensure compliance with its obligations under that treaty:

Develop comprehensive legislation on the Irish language in Northern Ireland and take resolute measures to protect and implement more effectively the language rights of persons belonging to the Irish-speaking community.<sup>7</sup>

The Committee stated it was 'deeply concerned by the failure to adopt legislation on the Irish language due to a lack of political consensus in the Northern Ireland Assembly'.<sup>8</sup> In 2014 COMEX reiterated its position on the Irish language Act.

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<sup>4</sup> UNDOC E/C.12/GBR/CO/5, 22 May 2009 (ICESCR Concluding Observations on UK) paragraph 37.

<sup>5</sup> Council of Europe, (UK Third Monitoring Report) Report of the Committee of Experts on the Charter ECRML 2010(4), Paragraph 14.

<sup>6</sup> As above, paragraph 15.

<sup>7</sup> Council of Europe, (UK Third Opinion on the UK) Advisory Committee on the Framework Convention for National Minorities. 2011(006).

<sup>8</sup> As above, Paragraph 146.

CAJ is conscious that the Act was a treaty-based obligation entered into by the State-party at St Andrews and that, as these quotes highlight, legislating to protect the Irish language engages the international human rights obligations entered into by the UK.

The commitment to legislate for the Irish language in St Andrews did not include a pre-requisite of cross party support. It is clear that at present there is no prospect of the Northern Ireland Assembly legislating for the Irish language in the context of opposition within considerable numbers of unionist elected representatives. CAJ has taken the position that given the UK commitment to the Irish language Act constitutes an international obligation which is not being discharged by the regional legislature, the obligation should fall to the UK Parliament. The Northern Ireland Human Rights Commission highlighted the obligations to legislate for treaty-based commitments in specific relation to the Irish Language Act in its own submission to COMEX:

While treaty compliance can be achieved by regional authorities meeting relevant standards, if a devolved government fails to deliver the state does not escape the obligations that it assumed, and the Commission therefore expects the UK Government to ensure that legislation is enacted. The Commission understands that a similar situation arose in 2007 with reference to another international obligation, namely the EU Gender Directive on Goods and Services, where, in the reported absence of agreement in the Northern Ireland Executive, the UK Government legislated on the matter.<sup>9</sup>

The precedent referred to by the Commission whereby Westminster intervened on behalf of the Assembly in 2007 relates to the transposition of EU directive (2004/113/EC) which implements the principle of equal treatment between men and women in the access to and supply of goods and services. The then deputy First Minister was willing to legislate for the directive but the then First Minister reportedly wrote to an Assembly Committee to state he was 'not agreeable' due to 'the explicit inclusion of reference to transgender or gender reassignment in the regulations'. Whilst gender reassignment is a different matter to sexual orientation, a DUP colleague on the Committee, Stephen Moutray, stated their concern was that 'Bible-believing Christians would be put in a position where they could have to take part in ceremonies at gay weddings, or if they were a guesthouse owner, they would have to give a double room to two gay men.'<sup>10</sup> In the context of this opposition to the policy, and lack of 'cross-party' consensus, UK Ministers intervened and the legislation was passed at Westminster to implement the international obligation.<sup>11</sup> The UK government has powers to direct action (including legislation) be taken by a Northern Ireland Minister in order to fulfil international obligations.<sup>12</sup> However, these powers have not been exercised in relation to the Irish Language Act.

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<sup>9</sup> NIHRC, *Parallel Report to the Committee of Experts on the Third Periodical Report of the United Kingdom*, September 2009, paragraph 33.

<sup>10</sup> *Paisley and McGuinness disagree over gay rights* PINK NEWS 13 December 2007.

<sup>11</sup> The Sex Discrimination (Amendment of Legislation) Regulations 2008. For further information see: Decision Notice Freedom of Information Act 2000 (Section 50) Reference: FS50216279 Date: 24 June 2010.

<sup>12</sup> S26-27 Northern Ireland Act 1998.

**In the likely event that the legislation cannot progress through the devolved institutions following the consultation CAJ would urge DCAL to make this clear to the UK government and seek their intervention to legislate in Westminster for the Act.**

## **The proposals on the content of the Act**

CAJ wishes to make the following brief comments in relation to the proposals on four issues:

### **Consultation with Irish speakers and the POBAL proposals**

Article 7(4) of the ECRML (as applied to Irish) provides that in determining policy as regards the use of the Irish language states must take into consideration the needs and wishes expressed by speakers of the Irish language. CAJ is conscious that POBAL, the umbrella group for Irish language organisations has developed and published proposals for the Act which in addition to being developed and supported by international experts, were developed by and with speakers of Irish.<sup>13</sup> CAJ welcomes that the current consultation references and draws on the POBAL proposals, and would urge further consideration of them as the basis for the Act.

### **The Act should reflect experience in Wales and Ireland**

The nature of the treaty-based commitment to legislate for the Irish language is specific to the Act reflecting experience in Wales and Ireland. CAJ can see this is reflected in, for example, proposals for official status for Irish in Northern Ireland. CAJ wishes to draw attention in particular to the situation in relation to legislative protection for the Welsh language having developed and strengthened since both the St Andrews Agreement and even since the initiation of the current consultation. In March 2015 the Welsh Assembly approved Welsh Language Standards that are to replace the Language Schemes in designated public authorities.<sup>14</sup> CAJ would urge DCAL to study this development in order for it to be reflected in proposals for the Act.

### **Statutory Duty to tackle prejudice against the Irish language**

Human rights bodies have expressed concern in relation to ongoing examples of intolerance, hostility and even demonization of speakers of the Irish language.<sup>15</sup> In this context CAJ urges consideration within the legislation of a statutory duty on public authorities, modelled on Article 7(3) of the ECRML, to promote, by appropriate measures, mutual understanding between all linguistic groups, and in particular respect, understanding and tolerance in relation to the Irish language.

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<sup>13</sup> POBAL, *Acht na Gaeilge do TÉ / The Irish Language Act NI*, 2<sup>nd</sup> edition 2012.

<sup>14</sup> Welsh Language Standards (No. 1) Regulations 2015.

<sup>15</sup> See for example Northern Ireland Human Rights Commission, *Parallel Report to the Committee of Experts on the Third Periodical Report of the United Kingdom*, September 2009, paragraph 61.

## Equality Impact Assessment (EQIA)

Finally CAJ concurs with the conclusions of the Equality Impact Assessment that the proposals for the Irish language legislation will not constitute an ‘adverse impact’ on any section 75 group. In relation to other EQIAs and screening exercises CAJ has articulated concerns that the concept of ‘adverse impact’ has often been misinterpreted. In such instances actions to promote Irish compatible with the ECRML framework have been misconstrued as having an ‘adverse impact’ on the mere basis that there is political opposition to them, or that speakers are more concentrated in one ethnic group than another. Neither of these matters meets the threshold of ‘adverse impact’ in relation to EQIAs and CAJ welcomes that DCAL has not misinterpreted the duties in this manner.<sup>16</sup>

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<sup>16</sup> For further information see CAJ’s Report no 64. *‘Unequal Relations? Policy, the Section 75 duties and Equality Commission advice: has ‘good relations’ been allowed to undermine equality?’* May 2013.