

CAJ's Submission no. S445

CAJ's submission to the United Nations Human Rights Committee on Economic Social and Cultural Rights (ICESCR) on the List of Issues for the UK's 6th Periodic Report

August 2015

About CAJ

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation working for human rights and affiliated to the International Federation of Human Rights (FIDH). 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. Our specific focus is on those human rights issues which are directly relevant to conflict and peace. This includes relevant economic, social and cultural rights as well as civil and political rights. We are concerned with combating impunity for violations in the past, guarantee non-recurrence by working for contemporary accountability, promote a rights based framework for the exercise of the freedoms of expression and assembly, advocate the application of the fundamental principles of equality and promulgate the benefits of a rights based society.

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 strategic litigation.

CAJ 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, the Human Rights Fund, the Joseph Rowntree Charitable Trust, the Paul D. Schurgot Foundation, UNISON and the Esmée Fairbairn 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.

Submission from the Committee on the Administration of Justice (CAJ) to the United Nations Human Rights Committee on Economic, Social and Cultural Rights (ICESCR) on List of Issues for the UK's 6th Periodic Report

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The Committee on the Administration of Justice (CAJ) is an independent human rights NGO with cross community membership in Northern Ireland and beyond. It was established in 1981, campaigns on a broad range of human rights issues and is affiliated to the International Federation of Human Rights (FIDH). CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its international human rights obligations. CAJ has been awarded several international human rights prizes, including the Reebok Human Rights Award, and in 1998 was awarded the Council of Europe Human Rights Prize. This submission covers the following themes:

- **Welfare 'Reform' and Northern Ireland (Art. 3, 6, 9, 11, 12)**
- **Austerity and Northern Ireland (Art. 3, 6, 9, 11, 12)**
- **Bill of Rights for Northern Ireland (Art. 1, 2)**
- **Irish language legislation (Art. 1, 2)**
- **Abortion legislation in Northern Ireland (Art. 12)**

Welfare 'Reform' and Northern Ireland (Art. 3, 6, 9, 11, 12)

Northern Ireland is a post-conflict and divided society, the impacts of welfare reform and austerity have the potential to entrench and exacerbate the patterns of deprivation and inequality which played a part in fuelling the conflict. Some of the UK government's welfare cuts have been implemented in Northern Ireland but currently the equivalent legislation to the Welfare Reform Act 2012 in Great Britain has been blocked by nationalist parties and the Green party in the Northern Ireland Assembly.¹

For not passing its welfare reforms the UK Government has imposed economic sanctions (which it refers to as fines or penalties) on the Northern Ireland Executive to the equivalent of around \$3 Million USD a week. This along with other austerity cuts to the Executive's budget has brought the power sharing institutions established by the 1998 Belfast / Good Friday Agreement to the brink of collapse.

¹ The power sharing unicameral legislature established as part of the 1998 Belfast/Good Friday Agreement. The Assembly has social security law among its competencies. A mechanism known as a 'petition of concern' can mean legislation requires the consent of both nationalist (referring to Irish nationalist) and unionist (referring to the union with Great Britain) parties to proceed.

The December 2014 [Stormont House Agreement](#) between the UK government and parties in the Northern Ireland Executive provided for the passage of the Welfare Reform Act alongside a supplementary social welfare fund to mitigate against claimants in Northern Ireland losing benefits. Since this time disagreements over the scope of a supplementary fund have led to neither provision progressing.

In its previous Concluding Observations on the UK the Committee requested data disaggregated on an annual basis across the grounds of discrimination on the impacts of welfare reform.² Such data should be readily available in relation to Northern Ireland. The implementation legislation for the 1998 Belfast/Good Friday Agreement put in place a key provision to oblige public authorities to conduct Equality Impact Assessments on policy changes. Equality Impact Assessments involve examination of all available data to determine whether there will be adverse impacts across nine discrimination grounds. Where there are adverse impacts public authorities are then obliged by the law to consider alternative policies and mitigating measures.³

However implementation of this public sector equality duty has been sidelined throughout the welfare reform process, with the purpose or effect of disguising the equality impacts of the welfare reform agenda. The government ministry responsible for social security policy in Northern Ireland (the Department for Social Development) in its equality impact assessment on the bill missed out four of the nine discrimination categories (namely religious belief, racial group, political opinion and sexual orientation). Among other matters this means, in the context of a divided society, there was no proper analysis of the impact of welfare reform on Northern Ireland's two main communities.

The Equality Commission for Northern Ireland is the official equality authority and is also a product of the implementation legislation for the 1998 Belfast/Good Friday Agreement. The Commission did share the above concerns that the Department for Social Development had failed to comply with its duties relating to equality impact assessing the welfare reform bill. However, despite repeated requests from trade unions and civil society to do so the Equality Commission declined to use its enforcement powers against the Department. There are therefore significant gaps in the official data which the Committee requested the UK provide.

Some of the specific welfare reform equality issues in Northern Ireland include the following:

- On every single multiple deprivation indicator in official statistics families from a 'Catholic' / 'nationalist' community still experience more deprivation than their 'Protestant' / 'unionist' counterparts.⁴

² [ICESCR, Concluding Observations 2009 on the UK](#), paragraph 42.

³ Northern Ireland Act 1998, section 75 and schedule 9

⁴ Nolan, Paul [The Northern Ireland Peace Monitoring Report Number 2 \(Community Relations Council](#), 2013) page 92.

- In the post-conflict context there are much higher rates of persons out of work due to a disability. In the particular circumstances of Northern Ireland there are also implications for increased child poverty and additional impacts on women.

The retrogressive nature of welfare cuts introduced 'reform' agenda across the UK will no doubt be raised in evidence to the Committee from a range of groups. We wish to draw attention to obvious yet underplayed additional impacts such measures would have in Northern Ireland. It is evident from history that within the context of a post-conflict divided society real or perceived inequalities and disadvantage risk fuelling conflict. The areas hardest hit by conflict and deprivation will also be those hardest hit by the implementation of the UK government's welfare reforms.⁵

It is therefore no exaggeration to raise concerns that 16 years on from the Belfast/Good Friday Agreement, which envisaged frameworks to break from the historic patterns of discrimination and disadvantage particular to Northern Ireland, that welfare reform will in fact entrench and exacerbate these very patterns of inequality.

The Committee may wish to ask the UK:

- **Why a full Equality Impact Assessment covering the nine statutory grounds was not conducted on the welfare reform bill in Northern Ireland, and how it consequently cannot provide the Committee with such requested data;**
- **What consideration it gave to retrogression in Covenant rights and the particular circumstances of Northern Ireland as a divided and post conflict society when imposing economic sanctions to pressure the devolved legislature into welfare cuts.**

Austerity in Northern Ireland (Arts. 3, 6, 9, 11, 12)

During the 2010-2015 term of the UK government the administration in Northern Ireland had its budget cut significantly. As has happened elsewhere in the state party this has led to significant cuts in public spending and services in Northern Ireland, a small jurisdiction of around 1.8 million people. CAJ is deeply concerned about the regressive socioeconomic impact of current and upcoming cuts and the likelihood that they will exacerbate inequality and poverty.

⁵ Christina Beatty and Steve Fothergill [*The Impact of Welfare Reform on Northern Ireland*](#) Centre for Regional Economic and Social Research and Sheffield Hallam University, page 5. This highlights that, for example, the new Derry-Strabane local government district will be the hardest hit by welfare reform and generally the most deprived areas across Northern Ireland will face the largest losses.

In the context of the particular circumstances of Northern Ireland there has been some political resistance to the full implementation of cuts desired by the UK government. There is therefore currently a significant budget deficit which threatens to collapse the Northern Ireland institutions.

The current deficit has been officially quoted as around \$940 million USD only a fraction of which is attributable to the sanctions imposed over welfare reform.⁶

There were crisis talks in Northern Ireland in 2013 on dealing with three outstanding issues from the peace settlement. These talks led to the December 2013 Haass-O'Sullivan Proposed Agreement and dealt with the issues of parades, flags and dealing with the past. The UK government did not participate in these talks, but did convene fresh successor talks which culminated in December 2014 with the aforementioned Stormont House Agreement.⁷ It is notable that paragraphs 1-14 of the Stormont House Agreement do not actually deal with the above matters but rather deal with a package of financial measures which, when put together, read as a structural or fiscal adjustment programme. The measures include significant reductions in the size of the public sector (with an estimated up to 20,000 job losses); further reform of the public sector; tax cuts on the profits of businesses; welfare cuts and consideration of the privatisation of public assets. The changes to the public sector are to be funded through increased borrowing.

Even the implementation of the Stormont House Agreement will however not produce a 'balanced budget' due to further cuts announced by the new UK government on its election in May 2015. No overarching official analysis of the potential implications on inequality of the fiscal measures within the Stormont House Agreement or new cuts has been published, despite the obligation to undertake an Equality Impact Assessment on new policies.

Other safeguards on economic and social rights introduced as part of the peace settlement have also not been complied with. The 2006 (UK-Ireland) St Andrews Agreement led to legislation to oblige the Northern Ireland Executive to adopt an anti-poverty strategy based on objective need.⁸ CAJ recently won a legal challenge finding the Executive had acted unlawfully for failing to adopt such a strategy.⁹

The Committee may wish to ask the UK how it has assessed the impact of its austerity policies on Covenant rights in relation to the particular circumstances of Northern Ireland as a divided society emerging from conflict.

⁶ [Briefing note to MLAs by the Committee on the Administration of Justice \(CAJ\) – on the Budget Bill debate scheduled for the week of 22 June 2015](#)

⁷ [Stormont House Agreement](#), Northern Ireland Office, December 2014.

⁸ s28E Northern Ireland Act 1998 (as amended).

⁹ [Application for Judicial Review by the Committee on the Administration of Justice](#)
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The Committee may wish to ask the UK how it will ensure an anti-poverty strategy based on objective need is taken forward in Northern Ireland with a view to the realisation of Covenant rights.

Bill of Rights for Northern Ireland (Art. 1, 2)

The Bill of Rights for Northern Ireland committed to under the Belfast/Good Friday Agreement is to incorporate further rights in addition to those within the ECHR into Northern Ireland law through legislation in the UK Parliament. In accordance with its mandate under the Agreement the Northern Ireland Human Rights Commission (an 'A' status NHRI) delivered its final advice to the UK government on the 10 December 2008, advising inclusion of rights protected under the Covenant. The following year the Committee urged the UK to enact the Northern Ireland Bill of Rights inclusive of economic and social rights 'without delay'.¹⁰ The UK government has since that time delayed legislating on the Bill of Rights and to facilitate this delay has introduced a pre-condition, incompatible with the commitment in the Agreement, of unionist-nationalist consensus as to its content before legislating.

The Committee may wish to ask the UK why it has delayed the NI Bill of Rights.

Irish language legislation (Art. 1, 2)

In 2009 the Committee urged the UK Parliament or devolved administration to implement the treaty based commitment to adopt an Irish Language Act it entered into in the bilateral (UK-Ireland) St Andrews Agreement 2006.¹¹ On three occasions since Council of Europe treaty bodies have reiterated this call. The Council of Europe Committee of Experts noted that the need for consensus between unionist and nationalist parties to legislate in the Northern Ireland Assembly meant it was unlikely the bill could be passed there, and that the Act could instead be passed in the UK Parliament given its parallel legislative competence.¹² In May 2015 the Department of Culture, Arts and Leisure formally consulted on the content of an Irish Language Act, but no legislation has yet been introduced.

The Committee may wish to ask the UK why it has not legislated to protect the Irish language.

¹⁰ [ICESCR Concluding Observations on the UK](#), paragraph 20.

¹¹ [ICESCR Concluding Observations on the UK](#), paragraph 37.

¹² Council of Europe, (UK Third Monitoring Report) Report of the Committee of Experts on the Charter ECRML 2010(4), paragraph 15; Council of Europe, (UK Third Opinion on the UK) Advisory Committee on the Framework Convention for National Minorities 2011(006).

Abortion legislation in Northern Ireland (Art. 12)

In 2009 the Committee urged the UK to amend abortion law in Northern Ireland to provide for terminations in cases of rape, incest or foetal abnormality.¹³ Following a consultation in April 2015 the Department of Justice Northern Ireland indicated it would proceed to take forward legislation to allow abortion in the circumstances of fatal foetal abnormality but not in cases of rape or incest.¹⁴ No legislation has however been introduced to date.

The Committee may wish to ask the UK how it intends to take forward its recommendation.

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¹³ ICESCR Concluding Observations on the UK, paragraph 25.

¹⁴ Justice Minister [‘David Ford has said there is a substantial body of support to make limited changes to the law on abortion’](#). Thursday, 16 April 2015