

**Submission from the
Committee on the Administration of Justice (CAJ) to the
UN Committee on the Elimination of all forms of Discrimination against
Women (CEDAW) on the List of Issues for the UK (S471)**

June 2018

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 a member of 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.

Introduction

CAJ has made formal submissions to the CEDAW Committee in its last three examinations of the UK (May 1999, Feb 2008 and July 2013).

This submission covers the following themes, in relation to Northern Ireland:

- 1. Abortion legislation in Northern Ireland: competency of UK Parliament**
- 2. Countering Incitement to Hatred on the grounds of gender**
- 3. Women's full and equal participation in public and political life - the gender related impact of the Northern Ireland conflict**
- 4. The 'two child rule' in social security provision**

1. Abortion legislation in Northern Ireland: competency of UK Parliament

On the 25 May 2018 a referendum in the Republic of Ireland on whether to retain the Eighth Amendment of the Irish Constitution (which prohibited abortion in almost all circumstances) resulted in a landslide (2-1) majority in favour of repeal. The Irish government is now progressing legislation to liberalise abortion law. In this context there has been renewed focus on legislative obligations to amend Northern Ireland's restrictive abortion laws.

As the Committee will be aware compliance with CEDAW constitutes an international obligation on the UK. The Committee¹ and other UN treaty bodies have consistently found that Northern Ireland abortion law is incompatible with UN standards. In February 2018 the Committees' Optional Protocol inquiry found that the current legislation constituted grave and systemic violations of the rights of women in Northern Ireland by unduly restricting their access to abortion. The Committee found violations of CEDAW Article 12 read alone; 12 read with 2 (c), (d), (f), (g), 5 and 10(h); 10(h) read with 16(1)(e); 14(2)(b) read alone; and 16(1)(e) read alone.² The Committee consequently advocated repeal of the existing legislation in Northern Ireland under the Offences against the Person Act 1861 and urged the UK to legislate to provide for expanded grounds to legalise abortion in a range of areas.

The UK Prime Minister and hence Government have however taken a position that remedial legislation should not be progressed by the UK Parliament, but rather by the Northern Ireland Assembly, on grounds that most justice and health competencies are matters transferred to the Northern Ireland Assembly.³

This position however is not compatible with duties on the UK Parliament under the terms of the bilateral (UK-Ireland) treaty of the Northern Ireland peace settlement, the Belfast/Good Friday Agreement.⁴ The Agreement makes it clear that there are binding duties on the UK Parliament (at Westminster) to legislate where needed to meet treaty based obligations. The Belfast/Good Friday Agreement provides that:

The Westminster Parliament (whose power to make legislation for Northern Ireland would remain unaffected) will:

b) [...] legislate as necessary to ensure the United Kingdom's international obligations are met in respect of Northern Ireland;⁵

Such intervention would not be necessary if the Northern Ireland Assembly would legislate to remedy the incompatibility with CEDAW of abortion legislation. However, the Northern Ireland Assembly has been suspended for over a year. Negotiations collapsed regarding its reestablishment in February 2018 and have not been reconvened. In addition, the largest party in the Assembly, the Democratic Unionist Party (DUP), maintains a veto over the

¹ UNDOC CEDAW/C/GBR/CO/7 (2013), Concluding Observations on UK paras. 50 and 51.

² UNDOC CEDAW/C/OP.8/GBR/1 '[Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women](#)' 23 February 2018 [77]

³ Criminal justice legislation, the 1861 Offences Against the Person Act and the Criminal Justice Act (NI) 1945, outlaw abortion in Northern Ireland and provide for 'life in penal servitude' for women, and an indeterminate sentence for medical professionals or others who assist in terminations.

⁴ [The Belfast/Good Friday Agreement](#), in addition to being approved by referendum, was incorporated as a treaty between the UK and Ireland and lodged with the UN (UK Treaty Series no. 50 Cm 4705)

⁵ Belfast/Good Friday Agreement, 10 April 1998, Strand 1, Paragraph 33(b).

introduction of legislation and has strongly opposed legislative change. The current minority UK Conservative Government is currently in a Confidence and Supply arrangement with the DUP. Whilst this may make the UK Government politically reluctant to introduce legislation in the UK Parliament (where there would be widespread support for liberalising abortion law), the constitutional position, in accordance with the Belfast Agreement is that legislative competence in this context does fall to the UK Parliament.

The UK Government has intervened in the past when introduction of legislation constituting international obligations (namely transposition of EU Gender Directive (2004/113/EC)), was blocked in the Northern Ireland Assembly by the DUP. The UK Parliament intervened and legislated instead of the Assembly on that occasion.⁶

CAJ urges the Committee to include Northern Ireland Abortion law on its list of issues, and seek clarification from the UK as to introduction of remedial legislation into the UK Parliament in accordance with the provisions of the Belfast/Good Friday Agreement.

2. Countering Incitement to hatred: protected grounds of gender

Northern Ireland has had legislation outlawing incitement to hatred since 1970. The current legislation is the Public Order (Northern Ireland) Order 1987.⁷ Offences under this legislation include (with some caveats) threatening, abusive or insulting words or behaviour, or displaying written material which either intend to stir up hatred or arouse fear on a protected ground, or which, having regard to all the circumstances, are likely to have that effect.

The legislation falls below the standards in Article 4 ICERD, against which the UK maintains a reservation despite regular calls by that Committee for its withdrawal. A similar situation arises with Article 20 ICCPR. There have been significant problems in Northern Ireland regarding incitement to hatred on protected grounds yet there have been only a handful of convictions in the years the legislation has been in force. The Police service, CAJ and the NHRI have all called for the legislation to be reviewed and in early 2017 the Northern Ireland Justice Minister, Claire Sugden MLA, agreed to the Department commencing such a review.

The protected grounds currently under the 1987 Order are: religious belief, sexual orientation, disability, colour, race, nationality (including citizenship) or ethnic or national origins. The categories of sexual orientation and disability were added in 2004.

Gender is not a protected ground under the Northern Ireland legislation, nor is gender identity. This is also the case in legislation in Great Britain.⁸ As the Committee will be aware gender is however a protected ground in 'hate speech' laws in a number of other jurisdictions, including South Africa, Canada, Netherlands, France, Chile and some Australian states, and is a recommended ground in the Council of Europe guidance referenced ground in the Council against Racial Intolerance (ECRI) general recommendation 15.⁹

⁶ The Sex Discrimination (Amendment of Legislation) Regulations 2008.

⁷ [Public Order \(Northern Ireland\) Order 1987](#) (as amended)

⁸ Public Order Act 1986

⁹ European Commission against Racism and Intolerance [ECRI general policy recommendation no.15 on combating hate speech, December 2015](#)

In the context of the Department of Justice (Northern Ireland) review of the legislation and the opportunity augment protected grounds to include gender and gender identity CAJ urges the Committee to include incitement to hatred legislation in its list of issues.

3. Women’s full and equal participation in public and political life - the gender related impact of the Northern Ireland conflict

The aforementioned Belfast/Good Friday Agreement of the Northern Ireland peace settlement affirmed the “the right of women to full and equal political participation.”¹⁰ The UK has however declined to apply UNSR 1325 in relation to the Northern Ireland conflict (‘The Troubles’) which CAJ has described as a “*missed opportunity to advance gender perspectives and gender mainstreaming along with real and meaningful participation for women in public and political life and broader conflict resolution processes.*”¹¹ CEDAW’s previous Concluding Observations in 2013 stated that:

The Committee further recalls its previous concluding observations...and remains concerned at the low representation of women in the post-conflict process in Northern Ireland and the failure to fully implement Security Council resolution 1325.¹²

The Committee called on the UK to “ensure the participation of women in the post-conflict process in Northern Ireland, in line with Security Council resolution 1325 (2000).”¹³

In a 2016 report the Special Rapporteur on truth, justice, reparation and guarantees of non-recurrence, Pablo de Grief, on a thematic UK visit relating to the Northern Ireland conflict concluded that: “*the gender related dimension of violations and abuses committed during the ‘Troubles’ particularly the heavy burden, disproportionately shouldered by women, of caring for traumatized and/or disabled family members deserves sustained, thorough analysis and integration into policymaking.*”¹⁴

A number of processes to deal with legacy issues have been taken forward since the Committees’ last examination. The 2014 Stormont House Agreement¹⁵, negotiated by the British and Irish governments and parties in the Northern Ireland Executive, provided for the establishment of a number of legacy bodies. These are namely and *Historical Investigations Unit* (HIU) to deal with outstanding investigations into conflict-related deaths; and *Independent Commission on Information Retrieval* (ICIR) to enable victims and survivors to seek and privately receive information about the deaths of family members; an Oral History Archive to deposit testimony and an Implementation and Reconciliation Group (IRG) to deal with themes and patterns.

¹⁰ Belfast/Good Friday Agreement, 10 April 1998 Rights, Safeguards and Equality of Opportunity, paragraph 1.

¹¹ CAJ’s submission to the Associate Parliamentary Group Inquiry into UNSCR 1325 (Sept 2011)

¹² UN DOC CEDAW/C/GBR/CO/7, Concluding Observations on UK, 2013, paragraph 42.

¹³ As above, paragraph 43.

¹⁴ UN Doc A/HRC/34/62/Add.1 17 November 2016, paragraph 18.

¹⁵ The [Stormont House Agreement](#), Dec 2014,

CAJ and academic experts produced a Model Implementation Bill for the Stormont House Agreement legacy bodies.¹⁶ Among other matters this provided for the HIU and ICIR having a gender-balance in staffing and the necessary experience and aptitude to provide a gender-sensitive approach to the exercise of the functions. It also provided for a provision in the IRG and Oral History Archive to seek to ensure sure gendered themes from the conflict are gathered and women’s perspectives/narrative are not over looked. Gender experts also drew up a set of broader Principles for dealing with the legacy of the Northern Ireland conflict.¹⁷

The Stormont House Agreement also provided for the establishment of a multi-member Commission on Flags, Identity, Culture and Tradition.¹⁸ The Commission was appointed in 2016 and its 15 Commissioners included only one woman.¹⁹

The consultation on legislation to establish the other aforementioned Stormont House Agreement legacy institutions (HIU, ICIR, IRG and Oral History Archive) was significantly delayed and only published by the UK in May 2018.²⁰ The official draft Northern Ireland (Stormont House) Agreement Bill, contains no gender specific provisions, but is currently open to consultation.

In the context of the ongoing consultation CAJ urges the Committee to include the legacy of the Northern Ireland conflict within its list of issues for the UK, with a view to ensuring legislation introduced to Parliament contains provision to address gender related dimension of violations and abuses committed during the conflict.

4. The ‘two child rule’ in social security provision

In the last CEDAW UK Examination in July 2013, NGOs and civil society reported on the negative impacts that welfare reform changes to the benefit system would have on women. One such further change is the ‘Two Child Rule’ in social security provision that commenced roll out in 2017, whereby certain social welfare and tax benefit payments are limited to the first two children within a family, and are not provided for a third or subsequent child. The rule will significantly increase poverty, including child poverty, and adversely affect women. There are certain exemptions, such as children born to rape – which necessitates an intrusive process. The ‘two child’ rule applies across the UK but will have particular impacts in Northern Ireland, given family sizes, child poverty rates, and the differences in access to reproductive rights.²¹

CAJ urges the Committee to include consideration of the ‘two child rule’, including exploring Northern Ireland specific-issues in its list of Issues for the UK.

¹⁶ Stormont House Agreement: Model Implementation Bill Northern Ireland Legal Quarterly (NILQ 67(1): 1–36)

¹⁷ Gender Principles for Dealing with the Legacy of the Past, September 2015

¹⁸ As above, paragraph 15.

¹⁹ <https://www.fictcommission.org/en/commission>

²⁰ Northern Ireland Office, [Addressing the legacy of Northern Irelands past, consultation May 2018.](#)

²¹ For further information see Women’s Policy Group [‘Opposing the two child tax credit cap and rape clause’](#) Briefing Paper, 2017.