

CAJ submission to the UN Committee on the Elimination of all forms of Discrimination against Women (CEDAW) on the UK's 8th Periodic Report

January 2019

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, the Council of Europe Human Rights Prize.

Introduction

CAJ welcomes the 8th periodic report from the UK government in conformity with its obligation to submit itself regularly to scrutiny by the CEDAW Committee. We hope that the following material will be of help to the Committee in carrying out a full examination of the extent of the UK's compliance with the Convention inasmuch as it applies to Northern Ireland.

CAJ also 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**

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

CAJ welcomes the long overdue reform of abortion law in Northern Ireland being made a core focus of the Committee's List of Issues.¹

Currently, in Northern Ireland, criminal justice legislation, namely the 1861 Offences Against the Person Act and the Criminal Justice Act (Northern Ireland) 1945, outlaw abortion and provide for 'life in penal servitude' for women, and an indeterminate sentence for medical professionals or others who assist in terminations. Abortion is only lawful where necessary to preserve the life of the pregnant woman or where there is a risk of real and serious adverse effects on the woman's physical or mental health, either long-term or permanent.

The UK Executive have taken a position that remedial legislation on abortion should not be progressed by the UK Parliament, but rather should be progressed by the Northern Ireland Assembly (the unicameral regional legislature established further to the 1998 UK-Ireland Belfast/Good Friday Agreement (GFA)). The UK position is reflected in its response to the Committee's List of Issues as follows:

Abortion is a devolved matter for a restored Northern Ireland Executive and Assembly to consider. UK Government remains committed to the restoration of a fully-functioning Executive and Assembly in Northern Ireland, so that locally accountable politicians can consider and address sensitive issues such as this.²

The UK position is grounded in the transfer of most justice and health competencies to the Northern Ireland Assembly. This position however is erroneous and misrepresents the constitutional position further to the GFA. Though both health and justice are indeed transferred matters, this position disregards the explicit provision in the 1998 GFA for the UK Parliament (Westminster) "to legislate as necessary" to ensure the UK's international obligations are met. The GFA 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;

Whilst the Northern Ireland administration could in theory legislate to ensure compliance of NI abortion law with CEDAW, there are reasons why this will not happen, which triggers the constitutional competence and requirements on the UK Parliament. Firstly, the Northern Ireland Assembly and Executive collapsed in January 2017 and have not been restated. Secondly the largest party in the Assembly, the Democratic Unionist Party (DUP), is strongly opposed to legislative change on abortion and also opposes the GFA. In accordance with current procedures on the operation of any power sharing administration in Northern

¹ CEDAW/C/GBR/Q/8: 'List of issues and questions in relation to the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland' 27 July 2018, section 19 Health

² CEDAW/C/GBR/Q/8/Add.1: 'Replies of the United Kingdom of Great Britain and Northern Ireland to the list of issues and questions' 16 November 2018

Ireland, the DUP has sufficient numbers of legislators to veto the introduction of legislation by any Northern Ireland Executive, and there are also likely to be sufficient numbers to prevent the progress of any non-government bill. The current minority UK Conservative Government is currently in a Confidence and Supply arrangement with the DUP, and has been unwilling to introduce legislation into the UK Parliament despite the clear constitutional requirement to do so in order to comply with international obligations.

As the Committee will be aware, compliance with CEDAW constitutes an international obligation on the UK. The Committee 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.³ 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.

Additionally, the incompatibility of Northern Ireland abortion law with the UK's international obligations was highlighted even more recently in a ruling by the UK Supreme Court in June 2018 in relation to the ECHR ([2018] UKSC 27).

The provision under the GFA to legislate to ensure the UK's international obligations are met is not merely permissive, but places an onus on the UK government to act. Furthermore, there is a precedent for such a circumstance, when back in 2007 a DUP Minister blocked the introduction of legislation transposing the EU Gender Directive (2004/113/EC) into the Northern Ireland Assembly. Accordingly, the UK Parliament stepped in and legislated on the Assembly's behalf to ensure the international obligation was complied with.⁴

Whilst the UK government has declined thus far to act, this has been on the basis of an erroneous presentation of the constitutional position in relation to legislative competence. It is consistent with framework and duties under the 1998 Belfast/Good Friday Agreement and international human rights law that Westminster take forward remedial legislation to remedy the incompatibility of the current legal framework with international obligations.

The Committee may wish to press the UK as to why it is misrepresenting the constitutional position on legislating to meet CEDAW obligations and urge the UK to immediately introduce legislation into the Westminster Parliament to ensure compliance with CEDAW.

³ 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 (1) 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

⁴ Through The Sex Discrimination (Amendment of Legislation) Regulations 2008. See: Decision Notice Freedom of Information Act 2000 (Section 50) Reference: FS50216279 Date: 24 June 2010

2. Countering Incitement to Hatred on the grounds of gender

The Committee's List of Issues include consideration of measures to tackle 'Gender-based violence against women'.⁵ A particular issue CAJ would seek addressed is the current exclusion of gender from the protected grounds in Northern Ireland Incitement to hatred legislation.

Northern Ireland has had legislation outlawing incitement to hatred since 1970. The current legislation is the Public Order (Northern Ireland) Order 1987.⁶

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 National Human Rights Institutions (NHRI) have all called for the legislation to be reviewed and at the beginning of 2017 the Northern Ireland Justice Minister, Claire Sugden MLA, agreed to the Department commencing such a review. This has not been fully taken forward due to the current collapse of the Northern Ireland Administration.

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. 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 Council of Europe guidance.⁷

In the context of the Department of Justice (Northern Ireland) review of the legislation, the Committee may wish to urge the review of the protected grounds under the legislation to include gender categories protected by CEDAW.

⁵ CEDAW/C/GBR/Q/8: 'List of issues and questions in relation to the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland' 27 July 2018, sections 9 & 10.

⁶ 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.

⁷ European Commission against Racism and Intolerance [ECRI general policy recommendation no.15 on combating hate speech, December 2015](#)

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

The List of Issues makes direct reference to UNSR 1325 (on women, peace, and security)⁸. The Committee raises questions specifically in relation to Northern Ireland, asking for comment on reports that “intimidation by paramilitary groups is a major barrier to women’s participation to peace building and other political processes in Northern Ireland”. The aforementioned Belfast/Good Friday Agreement of the Northern Ireland peace settlement affirmed the “the right of women to full and equal political participation”⁹, which is also relevant to the Committee’s question on participation in public life.¹⁰

The UK’s reply on this is somewhat brief, referring to an action plan on tackling paramilitary activity in Northern Ireland, published in 2016. In keeping with prior policy, the UK makes no indication that it would consider applying UNSR 1325 in the relation to the Northern Ireland conflict as a remedy to ongoing problems faced by women in the region.¹¹

The UK has consistently declined to apply UNSR 1325 in relation to the Northern Ireland conflict (‘The Troubles’).¹² 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 1325.¹³

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).”¹⁴

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.¹⁵

⁸ CEDAW/C/GBR/Q/8: ‘List of issues and questions in relation to the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland’ 27 July 2018, section 15.

⁹ Belfast/Good Friday Agreement, 10 April 1998 Rights, Safeguards and Equality of Opportunity, paragraph 1.

¹⁰ CEDAW/C/GBR/Q/8: ‘List of issues and questions in relation to the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland’ 27 July 2018, paragraph 13 & 14.

¹¹ CEDAW/C/GBR/Q/8/Add.1, November 2018, paragraphs 103 to 107.

¹² For further detail see CAJ’s submission to the Associate Parliamentary Group Inquiry into UNSCR 1325 (Sept 2011)

¹³ UN DOC CEDAW/C/GBR/CO/7, Concluding Observations on UK, 2013, paragraph 42.

¹⁴ As above, paragraph 43.

¹⁵ UN Doc A/HRC/34/62/Add.1 17 November 2016, paragraph 18.

A number of processes to deal with legacy issues have been taken forward since the Committee's last examination. The 2014 Stormont House Agreement¹⁶, 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; the 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.

CAJ and academic experts produced a Model Implementation Bill for the Stormont House Agreement legacy bodies.¹⁷ 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.¹⁸

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 2018.¹⁹

The official draft Northern Ireland (Stormont House) Agreement Bill, contains no gender specific provisions, but remains a draft not yet introduced into the UK Parliament.

The Committee may wish to urge the UK to ensure legislation it is committed to introducing to the UK Parliament to implement the provisions of the Stormont House Agreement contains provision to address gender related dimension of violations and abuses committed during the Northern Ireland conflict.

-ENDS-

¹⁶ The [Stormont House Agreement](#), Dec 2014.

¹⁷ Stormont House Agreement: Model Implementation Bill Northern Ireland Legal Quarterly (NILQ 67(1): 1–36)

¹⁸ Gender Principles for Dealing with the Legacy of the Past, September 2015.

¹⁹ [Northern Ireland Office, Addressing the legacy of Northern Irelands past, consultation May 2018.](#)