

## **Submission to Independent Commission on UK Counter-Terrorism Law, Policy and Practice**

**November 2022**

### **About CAJ**

1. 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 is affiliated to the International Federation of Human Rights (FIDH).
2. CAJ welcomes the opportunity to respond to the call for evidence to the Independent Commission on UK Counter-Terrorism Law, Policy and Practice, which is convened by the Bingham Centre for the Rule of Law.<sup>1</sup> CAJ gave oral evidence to the Independent Commission on the 16 September 2022.

### **Counter-Terrorism (CT) 'laws, policies and practices' in the Northern Ireland context**

3. Northern Ireland (NI) has particular circumstances as a jurisdiction emerging from conflict. In this context there have been conflict-resolution specific measures largely as a result of the agreements that make up the peace process.<sup>2</sup> There remains however, the question of dealing with ongoing and continuing paramilitary activity from both 'dissident' republican and loyalist groups.
4. Whilst republican splinter groups are marginalised, they remain active. Some are on ceasefire (but still may be involved in illegal activity) others oppose the peace process. On the loyalist side the main groups (the UDA and UVF) remain on ceasefire but retain broad memberships. Notwithstanding peace building efforts of some key figures, there is still a level of illegal activity linked to such groups, including significant levels of intimidation and control in geographical areas of influence.
5. In October 2015 a UK government commissioned security assessment was published; this focused on paramilitary groups on declared ceasefires.<sup>3</sup> Following this the *Fresh Start Agreement*<sup>4</sup> (November 2015) provided for a panel to produce a report on the disbandment of paramilitary groups (May 2016)<sup>5</sup> and shortly thereafter an NI

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<sup>1</sup> <https://binghamcentre.biicl.org/independent-commission-on-counter-terrorism-law-policy--and-practice->

<sup>2</sup> These included measures on criminal justice and policing reform and accountability; paramilitary decommissioning; early release of prisoners with conflict-related convictions, demilitarisation (normalisation), and rights protection (ECHR and NI Bill of Rights). For an analysis of same with a focus on implementation of rights-based commitments, see <https://caj.org.uk/2021/04/09/a-mapping-exercise-mar-21/>

<sup>3</sup> <https://www.gov.uk/government/publications/assessment-on-paramilitary-groups-in-northern-ireland>

<sup>4</sup> 'A Fresh Start – the Stormont Agreement and Implementation Plan' published by the Executive and the UK and Irish Governments on 17 November 2015.

<sup>5</sup> [The Fresh Start Panel: Report on the Disbandment of Paramilitary Groups in Northern Ireland](#), May 2016.

Executive Action Plan on tackling paramilitary activity and organised crime was adopted.<sup>6</sup> As we will focus on below, primarily using the example of housing intimidation, there are notable gaps in the assessment and the broader legal and policy response to ongoing paramilitary activity that flowed from it.

6. Notwithstanding the broader discussion regarding the utility and difficulties with shaping policy around the concept of ‘terrorism’, our view in general is that a ‘counter terrorism’ policy and its legal framework in NI should focus on curtailing the harms of the ongoing illegal activities of armed groups. In keeping with the duty of the state to secure the human rights of all those within its jurisdiction, the ‘harms’ in question should focus on the impact on all members of society rather than be limited to threats to the State itself.
7. The year after the paramilitary ceasefires of 1994, CAJ produced a paper ‘*No Emergency, No Emergency Law*’<sup>7</sup> making the case for repeal of NI specific emergency legislation. We remain of the view that ongoing illegal paramilitary activity is best dealt with by the ordinary criminal law and justice system. This would include offences such as ‘intimidation’, including from housing, that has long been a criminal offence in Northern Ireland.<sup>8</sup>
8. It is also of the utmost importance that legislation, policy and practice to tackle armed groups is itself within the law, as measured by compliance with human rights standards. In our view patterns of human rights violations resultant from elements of security policy fuelled and prolonged the Northern Ireland conflict. This includes issues of torture and ill-treatment of detainees; impunity for state killings; and informant-based paramilitary collusion. It also includes the issue of differential approaches, for example including the operation in the early part of the conflict of a separate ‘Arrest policy for Protestants’<sup>9</sup> suspected of paramilitary activity, or the non-prescription of the largest loyalist organisation—the Ulster Defence Association (UDA)- which remained an entirely lawful organisation for most of the Troubles.<sup>10</sup>
9. Despite concerns regarding regression in some areas<sup>11</sup> the process of policing reform in Northern Ireland remains one of the success stories of the of the process. This has also, to a degree, been the case with criminal justice reform.
10. The extent to which the Belfast/Good Friday Agreement (GFA) requirement of the incorporation of the ECHR into Northern Ireland law has underpinned human rights compliant policing responses should also be stressed. The PSNI Code of Ethics is grounded in the ECHR as is broader human rights oversight. We are concerned that the present UK government remains committed to diminishing the incorporation of

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<sup>6</sup> ‘[Tackling Paramilitary Activity, Criminality and Organised Crime](#)’ NI Executive Action Plan, July 2016.

<sup>7</sup> No Emergency, No Emergency Law: Emergency Legislation related to Northern Ireland the case for repeal, 1995 <https://caj.org.uk/1995/03/01/no-emergency-no-emergency-law-emergency-legislation-related-northern-ireland-case-repeal-1995/>

<sup>8</sup> <https://www.legislation.gov.uk/apni/1969/29/section/1>

<sup>9</sup> <https://www.patfinucanecentre.org/declassified-documents/arrest-policy-protestants>

<sup>10</sup> The UDA was ultimately proscribed in 1992. Before that time a fictitious cover name used by the UDA – the ‘Ulster Freedom Fighters’ was proscribed.

<sup>11</sup> For further detail see CAJ/ICCL ‘Conference report – PSNI@20: Human Rights Reflections on Policing Reform North and South’ November 2021 <https://caj.org.uk/2022/03/24/conference-report-psni20-human-rights-reflections-on-policing-reform-north-and-south/>

the ECHR in domestic legislation.<sup>12</sup> Similar moves by Russia were found by the Venice Commission not to be compatible with ECHR itself.<sup>13</sup> In addition to this and the conflict any such legislation would present with the GFA, some of the proposed areas of regression could impact directly on the supportive legal framework for policing in NI. This includes the prospect of a diminution of positive action duties attached to ECHR rights. The Article 2 duties to take reasonable steps to protect lives are directly relevant to dealing with paramilitary death threats and addressing past practices of selective threat warnings.<sup>14</sup>

11. The present Northern Ireland Troubles (Legacy and Reconciliation) Bill has been widely assessed, including by UN and Council of Europe experts as well as the Northern Ireland Human Rights Commission, as not being in compliance with the ECHR. Despite an official position that the bill is lawful, Ministers have also openly articulated that its purpose is to end investigations into the security forces. The Bill will essentially disapply the rule of law to NI legacy cases, prohibiting criminal and Police Ombudsman investigations, curtailing future inquests and civil cases. Such processes will be replaced by a new time-limited legacy body with limited powers and under significant levels of ministerial control.<sup>15</sup> Whilst Parliamentary passage is likely to be completed in early 2023 the Bill is not a certainty. It will face extensive legal challenge domestically and potentially in Strasbourg, as well as the difficulty of finding credible office holders willing to serve on such a body.
12. The broader relevance of legacy relates to confidence across sections of the public in policing and the justice system.<sup>16</sup> This itself has an impact on the policing of the present, including paramilitary threats, which is only effective with the cooperation of as broad a section of the public as possible.
13. Heavy handed use of counter terrorism powers can alienate sections of the public, particularly if it is perceived that there is no effective remedy for legitimate grievances.<sup>17</sup> Disproportionate and arbitrary use of counter terrorism type powers, such as stop and search can also damage confidence in policing and undermine the relationship building work undertaken by community policing teams.<sup>18</sup> There can also be complexities regarding how the Police and public authorities interface and

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<sup>12</sup> Bill of Rights Bill - <https://bills.parliament.uk/bills/3227>

<sup>13</sup> See the Opinion 981/2020 of the Venice Commission:  
[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)009-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)009-e)

<sup>14</sup> Concerns to this end are recorded in the inquiries conducted by Stevens and the DeSilva review.

<sup>15</sup> For further detail and narratives on these concerns see: <https://caj.org.uk/2022/08/05/com-submission-july-22/>

<sup>16</sup> It is worth noting the PSNI (and subsequently NCA in Northern Ireland) are under a statutory duty to carry out their functions with the aim of securing the support of the local community and its cooperation.  
<https://www.legislation.gov.uk/ukpga/2000/32/section/31A>

<sup>17</sup> For example see CAJ response to request for investigation request from Derry City and Strabane District Council into “recent complaints of inappropriate policing tactics used against women and vulnerable children in Creggan” relating to Terrorism Act searches:  
<http://meetings.derrycityandstrabanedistrict.com/documents/s34688/Appendix%209.pdf>

<sup>18</sup> See for example ‘Still Part of Life here? A report on the use and misuse of stop and search/question powers in Northern Ireland’ CAJ 2021 <https://caj.org.uk/2012/11/19/still-part-life/>

engage with paramilitary structures, with the risk of empowering rather than ending paramilitary power and activity.<sup>19</sup>

14. Whilst also complex, the broader impact of policing the legacy of the past on the contemporary policing and justice framework is also relevant. Concerns over investigative independence, effectiveness and conduct in legacy cases has damaged broader confidence in the PSNI within affected communities. This includes one case regarding the arrest of two journalists and searches of their premises following their revelation in a documentary of the involvement of a police informant in the 1994 Loughinisland massacre.<sup>20</sup> It is worth noting however that in this instance the journalists were able to access an effective remedy through the Courts.<sup>21</sup> There is a broader sense in which the courts' role in legacy cases has enhanced confidence in the rule of law among sections of the community who would have previously not had such confidence. The closing down of such routes through the legacy bill would remove this opportunity.
15. One further area we would wish to highlight is the high risk area, in human rights terms, of the management of informants, 'Covert Human Intelligence Sources,' (CHIS) and in particular their authorised involvement in criminal offences. At the very least CHIS should never be authorised to engage in actions that are themselves human rights violations. Whilst matters have significantly improved in this area of policing through reform, we retain concerns regarding the present legal framework<sup>22</sup> and also the oversight mechanisms for this area of policing falling short of those envisaged by the Pattern Commission.<sup>23</sup>
16. A broader, but related concern, is that present approaches may tend towards the 'management' of an acceptable level of paramilitary activity, that does not involve adequate intervention on all areas of harm. This is discussed further below.

### **Paramilitary attacks and intimidation in 2022**

17. A central focus of this submission will now be to examine the extent the current legal and policy approaches effectively deal with the area of paramilitary attacks and intimidation against the population or sections of the population.
18. One particular area of focus is the prevalence of paramilitary involvement in housing intimidation. Tackling communal housing segregation in Northern Ireland has been long understood as one of the key social problems preventing cross-community integration and fuelling inequality. The GFA affirmed a number of specific rights that were indicative of an attempt to break with such practices ('the right to freely

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<sup>19</sup> See for example: Policing, Justice and Community 15 Years on: The State and community control  
Fiona McCausland, community activist at CAJ Mapping the Rollback Conference 2013  
<https://caj.org.uk/2013/11/19/mapping-rollback-human-rights-provisions-belfastgood-friday-agreement-15-years/>

<sup>20</sup> <https://www.nuj.org.uk/resource/nuj-welcomes-final-settlement-for-no-stone-untuned-journalists.html>

<sup>21</sup> <https://judiciaryni.uk/sites/judiciary/files/decisions/Summary%20of%20judgment%20-%20In%20re%20Fine%20Point%20Films%20-%2010.07.20.pdf>

<sup>22</sup> See Written Evidence from Reprieve, The Pat Finucane Centre, Privacy International, The Committee on the Administration of Justice, Rights and Security International, Big Brother Watch (CHIS0002)  
<https://caj.org.uk/wp-content/uploads/2020/10/Joint-Written-Evidence-JCHR-CHIS-Bill-October-2020-FINAL.pdf>

<sup>23</sup> <https://caj.org.uk/2015/12/03/s449-written-evidence-joint-committee-draft-investigatory-powers-bill/>

choose one's residence' and 'freedom from sectarian harassment.')

Given this, it is remarkable that there is limited attention and strategic intervention in relation to the major driving factor behind ongoing housing segregation – paramilitary intimidation from housing. This includes racist, sectarian and homophobic intimidation from housing.

19. A much broader appraisal of levels of housing intimidation, along with recognition of gaps in data, is provided later in this submission but suffice to say many thousands of people have been subject to paramilitary intimidation from housing in the past decade.
20. Persons rehoused – generally due to verified assessments of risk of death or serious injury – will represent the tip of the iceberg of the impact of housing intimidation. The very threat of likely paramilitary intimidation is often sufficient to deter persons from even considering taking up housing in areas where they would be under threat. This is particularly the case for Catholics and ethnic minorities in relation to loyalist paramilitary controlled areas. Housing policy and housing segregation is shaped by this threat.
21. Written Evidence that covers this and other issues has recently been submitted by CAJ and others to an inquiry by the Northern Ireland Affairs Committee of the UK Parliament into the effect of paramilitaries on society.<sup>24</sup>
22. Written Evidence submitted by Clanmil, one of NI's largest Housing associations, references the 'profound socio-economic impact on us as a landlord, on our tenants and on business and organisations operating or unable to operate within these areas' in relation to areas of paramilitary control. A case study is provided of one particular area of loyalist control where there has been a high number of tenancy terminations linked to paramilitary intimidation, with half the people in a new development actively seeking a transfer elsewhere. The submission also references the 'very real risk' to staff working in the area who have experienced 'intimidation and threats of violence against them.'<sup>25</sup>
23. Other submissions document the context of paramilitary linked gender-based violence and intimidation. NI Women's Aid evidence states:

Whilst we as [a] population have progressed a lot of the last 20 years in creating a more peaceful society, to deny communities no longer live under a cloud of intimidation and fear of retribution for speaking out against paramilitary organisations is to deny the reality of life for many working-class people in traditionally paramilitary controlled areas. Our communities are still living under an atmosphere of 'coercive control' from paramilitaries, from turning a blind eye to a teenager getting kneecapped in a so called 'punishment attack', to being too afraid to call the police on their neighbour loudly beating his wife because of 'who he is' and fearing for their own safety. For many years, Women's Aid have also unfortunately heard from many women from different community backgrounds whose perpetrators has hid behind a paramilitary association, which due to this organisation's

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<sup>24</sup> <https://committees.parliament.uk/work/6630/the-effect-of-paramilitaries-on-society-in-northern-ireland/>

<sup>25</sup> <https://committees.parliament.uk/writtenevidence/108821/html/>

ongoing intimidation of the community, means therefore that the community isn't willing to denounce the perpetrator due their 'standing' either for their known paramilitary association, or being seen as a 'leader' within that community. The perpetrator's 'standing' is seen as more important than what they do to women behind closed doors, and therefore the woman is ostracised by the community they've known their whole lives for speaking out against their well-connected abuser or seeking help from the Police.<sup>26</sup>

### **How the threat from paramilitaries is officially assessed in NI**

24. The threat level from 'Northern Ireland Related Terrorism' is assessed by the Security Service as a separate measure to the threat to the UK from international terrorism.<sup>27</sup> As set out in the recent Report of the Independent Reviewer of the Justice and Security Act 2007, the assessment is centred on 'threats to national security'. The Reviewer elaborates that the threat in Northern Ireland during the review period:

...has been largely based on the activities of dissident republican (DR) groups who see violence and attacks on the police and state agents and agencies as a legitimate means to achieve their political goals. Even though loyalist paramilitaries remain active, until now, they have not targeted state agencies. Therefore they do not currently meet these criteria and their levels of activity do not contribute to the assessment of threat in Northern Ireland.

Where they do not target agents of the state or are not deemed to threaten democracy, loyalist -and some republican -activities are not included in the security assessment of the threat level.<sup>28</sup>

25. As such the threat assessment from paramilitaries on this measure focuses on threats to the state rather than the broader public or sections of the public (despite the latter expressly being reflected in the definition of terrorism in domestic law).<sup>29</sup>

26. Whilst 'national security' remains largely undefined this approach is consistent with statements from the PSNI at the time of the official transfer of primacy for national security covert policing to MI5 coinciding with the 2006 St Andrews Agreement, that the PSNI would retain sole responsibility for loyalist agents, with MI5 dealing with republican national security issues.<sup>30</sup>

27. More recently there has been increased loyalist paramilitary activity in the context of opposition to the NI Brexit Protocol, along with a formal withdrawal of support from the GFA. There has been no formal announcement we are aware of indicating a formal change of this position as to the focus of MI5 solely relating to republicans. The Northern Ireland section of the MI5 website focuses in detail on 'Dissident Republican Terrorist Groups', and only makes a passing reference to the main

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<sup>26</sup> <https://committees.parliament.uk/writtenevidence/108538/html/> see also evidence by the Women's Policy Group: <https://committees.parliament.uk/writtenevidence/108824/html/>

<sup>27</sup> <https://www.mi5.gov.uk/threat-levels>

<sup>28</sup> Report of the Independent Reviewer Justice and Security (Northern Ireland) Act 2007 FOURTEENTH REPORT 1 August 2020 – 31 July 2021, Professor Marie Breen-Smyth June 2022, paragraphs 4.3-4.

<sup>29</sup> Terrorism Act 2000, s1(1)(b).

<sup>30</sup> Moriarty, Gerry 'Concern over MI5 expanded role' Irish Times, 15 February 2006. <https://www.irishtimes.com/news/concern-over-mi5-expanded-role-1.1015500>

loyalist groups as having ‘ceased their terrorist campaigns and engaged with the political process.’<sup>31</sup>

28. It is still the case that the main threat to, for example, police officers in NI will be from dissident republican groups; yet at the same time the main threat to, for example, ethnic minorities of being victim a racist attack, will be from elements of loyalist groups. However, it appears only the former and not the latter are part of the official assessment of threat.
29. CAJ has significant misgivings regarding the remit of MI5 in Northern Ireland creating a significant ‘accountability gap.’ The Security Service sits outside the accountability and oversight framework provided for by the Patten Commission and broader mechanisms introduced during the peace process (primarily the Policing Board and Police Ombudsman).<sup>32</sup> Without prejudice to this issue we observe that nevertheless a significant differential is created, not least in the resources deployed, to deal with harms of paramilitary activity, in relation to the Security Service focusing only on republicans and not loyalists.
30. The PSNI’s annual Security Situation Statistics take a broader approach in encompassing both republican and loyalist activity. This includes a number of measures including security related deaths, bombing and shooting incidents, and other measures relating to firearms and explosives. Also measured are paramilitary-style assaults & shootings -which are not targeted at the State. Notably omitted however are statistics on housing intimidation. Furthermore, measures relating to explosions do not include ‘hoax devices, petrol bombings or incendiaries’ that may be part of intimidation incidents.<sup>33</sup>
31. The aforementioned assessment of ongoing NI paramilitary activity in 2015, which was led by Lord Carlisle, lists broad areas of crime it assessed named paramilitary groups are involved in. Members, including some senior members of the UDA are assessed as being involved in ‘drugs dealing, robbery, extortion and the distribution of counterfeit and contraband goods’ with reference also made to paramilitary-style assaults, street disorder and violent protests. UVF members, including leaders, are said to be ‘extensively involved’ in organised crime including ‘drug-dealing, extortion and smuggling’. Notably, despite the prevalence of housing intimidation, no reference is made to it, nor is there any reference to sectarian or racist crime.<sup>34</sup>
32. An outworking of this is that neither housing intimidation nor racist (including sectarian) incidents are mentioned in the NI’s Executive programme for tackling

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<sup>31</sup> <https://www.mi5.gov.uk/northern-ireland> Accessed 15 November 2022.

<sup>32</sup> For further detail see CAJ ‘The Policing You Don’t See: Covert policing and the accountability gap: Five years on from the transfer of ‘national security’ primacy to MI5’ 2012: <https://caj.org.uk/2012/11/19/policing-dont-see/>

<sup>33</sup> PSNI/NISRA Police Recorded Security Situation Statistics, 1 November 2021 to 31 October 2022 <https://www.psnipolice.uk/official-statistics/security-situation-statistics>

<sup>34</sup> ‘Paramilitary Groups in Northern Ireland: An assessment commissioned by the Secretary of State for Northern Ireland on the structure, role and purpose of paramilitary groups focusing on those which declared ceasefires in order to support and facilitate the political process’ (Northern Ireland Office: 2015). Paragraphs 5 & 8.

paramilitary activity or its associated Action Plan. The word intimidation is only mentioned once, in a reference to organised crime.<sup>35</sup>

33. The following section provides further data on the extent of housing intimidation which further questions the omission of this area from official threat assessments and strategic policy on countering paramilitary activity.

#### **Data on the prevalence of housing intimidation**

34. As alluded to above it is no exaggeration to suggest that housing is an area of public policy in Northern Ireland that is still extensively shaped by paramilitary control and coercion. The public policy response has not moved much beyond assistance in moving victims of intimidation. There is a lack of transparency and public scrutiny in the handling of the issue. This includes a level of obfuscation of data as to which paramilitary groups are thought to be the source of threats. Data has not been routinely published or desegregated in an accessible way but has been drawn out by media requests.
35. In 2015 *The Detail* investigative journalism website obtained figures from the Northern Ireland Housing Executive (NIHE) documenting 1,842 cases of persons made homeless through intimidation over a three year period between 2012-2015, with over 70% of cases concerning paramilitary intimidation. There was an unclear separation in these NIHE figures of 'paramilitary incidents' from racist, sectarian and homophobic incidents, that may also have involved paramilitaries. In close to 900 of the cases of paramilitary intimidation, the NIHE confirmed the threshold of risk of death or serious injury was met. Yet despite such assessments being conducted the NIHE would not release statistical data on the paramilitary organisations suspected of being responsible. Rather *The Detail* was left to seek to triangulate general geographical location to reach conclusions, with the NIHE stating 'We cannot provide information regarding the origin of paramilitary threats as this is not recorded.'<sup>36</sup>
36. It is difficult to understand how a threat can be verified by NIHE or PSNI as coming from a source with the capability of inflicting death or serious injury, but no record is kept as to which organisation the source of threat is connected to. Mapping paramilitary activity to be able to counter it and inform broader strategic interventions would surely be a cornerstone of any effective approach.
37. Housing intimidation figures were also released by NIHE under Freedom of Information legislation following a request from the *Belfast Telegraph* for the period of 2015-2018 – recording over 2,000 cases of intimidation from housing in the time period, with 73% attributed to paramilitaries (1,488).<sup>37</sup> The most recent statistics published by the *Belfast Telegraph* in 2022 show that almost 1,400 people presented themselves as homeless to the NI Housing Executive due to paramilitary intimidation

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<sup>35</sup> 'Tackling Paramilitary Activity, Criminality and Organised Crime' NI Executive Action Plan, July 2016.

<sup>36</sup> <https://thedetail.tv/articles/paramilitaries-in-northern-ireland-forcing-hundreds-from-their-homes-each-year>

<sup>37</sup> <https://www.belfasttelegraph.co.uk/news/northern-ireland/exclusive-2000-households-forced-out-of-their-homes-paramilitaries-blamed-for-73-of-cases-37676384.html>



over the last five years.<sup>38</sup> (Whilst this is a drop on previous statistics it does cover the period of the pandemic.)

38. Further information is provided in a report by the Criminal Justice Inspection NI (CJINI) into the work of BASE 2 who provide “information from community sources to support the verification process provided by the PSNI and the work of the NIHE.” This relates to a process whereby BASE 2 will verify that paramilitary housing intimidation threats are real, and often can therefore result in the moving of the victim. The CJINI puts into the public domain general statistics from 2012-2018 regarding threat verification assessments by BASE 2, the vast majority of which are conducted on the basis of referrals from NIHE. This is the only example we have seen of the inclusion of a table on the ‘alleged sources of threats’ at the time of such referrals reflecting the applicants’ classification of the nature of the threat. The figures for each year highlight that the majority of such threats come from ‘Loyalists’ (there is no further disaggregation). Numbers of threats from ‘Republican’ and ‘community’ are also recorded.<sup>39</sup>
39. In relation to data from the PSNI the Policing Board have previously sought data on source of threat in 2016.<sup>40</sup> The PSNI responded that the issue was a ‘complex’ matter and they would return to it; it is not clear if this occurred. The then Policing Board Annual Human Rights Report (covering a period to 2015) cited PSNI statistics of 1,262 certificates issued by the PSNI Chief Constable in respect of persons intimidated from their homes between from the time of the GFA (April 1998) and 2015. This would equate to an average of 70 per year.<sup>41</sup> These figures only refer to owner-occupiers and relate to certificates for the SPED (Special Purchase of Evacuated Dwellings) scheme. They therefore constitute a fraction of those intimidated from housing. Some annual SPED figures were given to the Policing Board in 2014, but despite conducting the assessment and issuing the certificates the PSNI was unable to give statistics on which paramilitary organisation was suspected has having been responsible or connected to the threat.<sup>42</sup> This was further probed by the Policing Board’s Performance Committee in February 2015, which noted the figures were not an accurate reflection of people having to leave homes, as they do not cover those who had left NIHE or private-rented property, those who had not applied for a SPED certificate or situations where one family member, such as a child, moves out due to threats. The Performance Committee sought information to be gathered by the PSNI to ‘more accurately reflect the extent of paramilitary intimidation’ in relation to housing. The PSNI responded that although there may be liaison between the PSNI and NIHE locally they did not collate statistics, and whilst

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<sup>38</sup> <https://www.belfasttelegraph.co.uk/news/northern-ireland/almost-1400-people-forced-from-homes-by-paramilitaries-41880846.html>

<sup>39</sup> <https://www.cjini.org/TheInspections/Inspection-Reports/2020/January-March/BASE-2-WORKING-TO-SUPPORT-INDIVIDUALS-UNDER-THREAT>

<sup>40</sup> See Policing Board Questions to Chief Constable, Intimidation which results in people having to remove [sic] out of their home (Pat Sheehan), question published 3 March 2016

<sup>41</sup> NIPB Human Rights Annual Report, 2015, p171.

<sup>42</sup> NIPB Questions to Chief Constable, Paramilitary Style Attacks (Performance Committee), December 2014, p29.

they could gather more data the PSNI asserted that it was ‘not clear what policing purpose this would serve’.<sup>43</sup>

40. The lack of transparency over data appears to have had a knock on effect in the issue of housing intimidation being reflected in strategic policy on paramilitarism. For a long time a similar concern has been raised, regarding racist intimidation and broader racist crime, by both ethnic minority organisations and the Northern Ireland Human Rights Commission. Back in 2006 a report commissioned by the NI Council for Ethnic Minorities found it ‘astounding’ that the then Independent Monitoring Commission (IMC) on paramilitary activity had ‘almost completely ignored loyalist paramilitary involvement in racist violence.’<sup>44</sup> In 2011 the Human Rights Commission made reference to an IMC report recommending that an ‘important step would be for loyalist paramilitaries, including the UDA to stop targeting nationalists and members of ethnic minorities’, but the Human Rights Commission raised concerns that ‘this context is only intermittently referred to in official policy and strategy.’<sup>45</sup> Into 2022 a similar phenomenon continues to exist in relation to paramilitary involvement in housing intimidation, including that which is grounded in sectarianism or other forms of racism.

#### **Links to sectarian and racist hate expression**

41. A core part of sectarian and racist intimidation from housing can be the use of hate expression in public space to deter persons from the targeted groups from remaining in or taking up housing. This can include racist and sectarian slogans in graffiti or banners (‘locals only’ ‘[x] out’) or the use of flags, including paramilitary flags, for the purposes of intimidation. This can include individual incidents of intimidation (e.g. when a flag is solely placed outside the home of the only ethnic minority family in a street) or more generalised forms, where for example flags are placed at the entrance to new housing developments – including those expressly developed to be ‘shared’ – with the purpose or effect of deterring the ‘other’ from moving in to the area. One example of this is the Cantrell Close shared housing scheme in South Belfast where the placement of flags for such a purpose was followed by Catholic families being violently intimidated out of their homes, which the PSNI attributed to the UVF.<sup>46</sup>
42. CAJ recently produced a research report into the broader questions of public authority practices in relation to removing hate expression from public space, including expression used for intimidation from housing.<sup>47</sup> The report is critical of practices of non-intervention by some relevant public authorities. Specifically, we

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<sup>43</sup> NIPB Questions to the Chief Constable, Extent of Paramilitary Intimidation, February 2015, p7-8.

<sup>44</sup> McVeigh, Robbie ‘The Next Stephen Lawrence? Racist Violence and Criminal Justice in Northern Ireland’ (NICEM, 2006) Paragraph 4.11.

<sup>45</sup> NIHRC, Submission to the Committee on the Elimination of Racial Discrimination, Parallel Report on the 18th and 19th Periodic Reports of the United Kingdom under the ICERD (2011), paragraph 84. Referencing reference to paragraphs 3.32-5 of the Eighth Independent Monitoring Commission report.

<sup>46</sup> “PSNI: ‘UVF behind intimidation of Catholic families’” <http://www.bbc.co.uk/news/uk-northern-ireland-41515142> see also <https://www.belfasttelegraph.co.uk/news/northern-ireland/psni-approach-to-removing-loyalist-flags-frustrating-38319474.html>, see also: <https://www.belfasttelegraph.co.uk/news/northern-ireland/alliance-disappointed-by-police-response-to-uvf-flags-in-cantrell-close-38318559.html>

<sup>47</sup> <https://caj.org.uk/2022/05/12/hate-expression-report-may-22/>

are critical of the PSNI position being grounded in a public order perspective only rather than giving due weight to the harms of hate expression. In this sense the PSNI will not remove hate expression if there would then be possible disorder and may even *prevent the removal of paramilitary-approved expression* as it is those individuals most likely to react with violence if it is removed. Whilst not dismissing public order as a legitimate concern, we do argue that this approach could provide an incentive for paramilitaries to create a threat to control the type of expression that is permitted in a particular area.<sup>48</sup>

43. The report recommends an alternative approach in line with Recommendation 15 of the Independent Review of Northern Ireland Hate Crime Legislation, led by Judge Desmond Marrinan which issued its final report in late 2020 and recommended a statutory duty on relevant public authorities to take reasonable steps to remove hate expression from their own property and, when engaging their functions, broader public space.<sup>49</sup>

### **Conclusion**

44. The above text elaborates on a number of aspects of the oral evidence given to the Commission, including the data on the prevalence of housing intimidation. CAJ would be happy to continue engage with the Commission in its work.

**CAJ, November 2022**

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<sup>48</sup> For further discussion and the PSNI response see: <https://www.thedetail.tv/articles/psni-prioritisation-of-public-order-over-hate-expression-criticised-in-report>

<sup>49</sup> Recommendation 15: *There should be a clear and unambiguous statutory duty on relevant public authorities including Councils, the Department for Infrastructure and the Northern Ireland Housing Executive, to take all reasonable steps to remove hate expression from their own property and, where it engages their functions, broader public space.* Department of Justice (December 2020), *Hate Crime Legislation in Northern Ireland: Independent Review*, Final Report (hereafter 'Hate Crime Review') para 10.76.