

## **Submission to European Commission Against Racism and Intolerance (ECRI) Monitoring Mission to the UK**

**November 2023**

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.
2. CAJ welcomed the opportunity to meet with the ECRI delegation in Belfast in November 2023. We covered two issues – specific to Northern Ireland - that are the subject of further evidence in this present submission, namely:
  - The state response to paramilitary racist expression and intimidation;
  - Racial profiling in selective passport checks in and out of Northern Ireland.

### **The State response to paramilitary racist expression and intimidation in Northern Ireland**

3. Racist hate crime for some time has been a serious problem in Northern Ireland. The [Independent Review of Hate Crimes Law in Northern Ireland](#), undertaken by Judge Marrinan, highlighted that the likelihood of a person being a victim of a reported racist incident was one in 31 (the corresponding figure for a 'sectarian'<sup>1</sup> incident was approximately a one in 1,777).
4. This pattern of has continued into 2023 and includes orchestrated racist intimidation in particular areas.<sup>2</sup> There has also recently been a prevalence in paramilitary-linked racist signage in public space including that inciting discrimination in housing by threatening public and private landlords who rent to migrants.<sup>3</sup>
5. Whilst Northern Ireland is 25 years on from the 1998 (Belfast/Good Friday) peace agreement there remains an issue with active armed groups. Whilst mainstream Irish

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<sup>1</sup> Both the Advisory Committee on Framework Convention for National Minorities and the UN ICERD Committee have held that sectarianism in Northern Ireland should be treated as a specific form of racism. The figure for racism therefore refers to other forms of racism.

<sup>2</sup> See for example investigative reporting in *The Detail*: [Race hate victims 'enduring months of attacks' - Investigations & Analysis - Northern Ireland from The Detail](#); [Race hate victims 'failed' by justice system - Investigations & Analysis - Northern Ireland from The Detail](#); [Race hate crimes in one area of Belfast have doubled since 2017 - Investigations & Analysis - Northern Ireland from The Detail](#)

<sup>3</sup> [Belvoir: Anti-migrant signs treated as 'hate incident' - BBC News](#); [Belvoir: Windows and doors smashed in Belfast tower block - BBC News](#); [Co Tyrone: Police probe hate incidents after anti-immigrant signage erected and home targeted in Moygashel | BelfastTelegraph.co.uk](#); [Co Antrim Portrush: Police investigating after anti-asylum seeker flags erected in Portrush | BelfastTelegraph.co.uk](#); <https://www.bbc.co.uk/news/uk-northern-ireland-67566360> The public housing authority for Northern Ireland is the Northern Ireland Housing Executive (NIHE) referenced in a number of the signs. <https://www.belfasttelegraph.co.uk/news/northern-ireland/racist-anti-immigrant-posters-erected-in-newtownards-in-suspected-co-ordinated-uda-campaign/a475331134.html> The UDA - Ulster Defence Association – is an outlawed loyalist paramilitary group.

republican armed groups (the IRA) have ceased paramilitary activity, there remains a number of small and marginalised republican splinter groups active who remain a threat primarily targeting police officers and the state. Whilst there has also been many persons who have transitioned significant networks and structures of the mainstream loyalist armed groups remain in place (loyal refers to loyalty to the British crown).

6. It is well documented that there is a particular problem in Northern Ireland of the involvement of elements of loyalist paramilitarism in racist violence and intimidation, whether sanctioned by such organisations per se or involving persons with paramilitary connections. This includes the question of the extent of any paramilitary collaboration with British far right groups operating.<sup>4</sup>
7. In 2017 a [Thematic Review of Policing Race hate crime](#) by the Northern Ireland Policing Board (the official oversight body for policing) stated: *“hate crime will not be addressed unless and until all agencies are able and willing to acknowledge and discuss the issues, including the reported threat from paramilitary groups targeting minority ethnic communities.”*<sup>5</sup>

*The State response to racist housing intimidation:*

8. 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.<sup>6</sup>
9. This includes sectarian and racist intimidation in areas where there is a level of paramilitary control. It encompasses actual violent intimidation from housing by paramilitary organisations or persons with paramilitary connections as well as the broad threat of intimidation, which is the primary factor in deterring families from moving into particular areas where they have a real and realistic concern they would be subject to intimidation. There is also the related phenomenon of slogans and other items placed on public property as a form of sectarian and racist intimidation to deter persons from taking up housing.
10. Data has not been routinely published or desegregated in an accessible way but has been drawn out by media requests. In 2015 *The Detail* investigative journalism website obtained figures from the regional housing authority documented 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. In close to 900 of the cases of paramilitary intimidation where confirmed the threshold of risk of death or serious

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<sup>4</sup> [Frontline Lessons for the Future Collaborative research on the impact of immigration law and policy in post-Brexit Northern Ireland June 2022](#) section 4.1.3 Paramilitary connections to racist violence in NI.

<sup>5</sup> [Thematic Review of Policing Race Hate Crime](#) See FN37, p73.

<sup>6</sup> For further detail see [CAJ Written Evidence to the Northern Ireland Affairs Committee of the UK Parliament inquiry into ‘The effect of paramilitaries on society in Northern Ireland’, May 2022](#)

injury was met. Yet despite such assessments being conducted, the housing authorities would not release statistical data on the paramilitary organisations suspected of being responsible with the housing authority (NIHE) ‘We cannot provide information regarding the origin of paramilitary threats as this is not recorded.’<sup>7</sup> It is difficult to understand how a threat can be officially verified as coming from a source with the capability of inflicting dealt or serious injury, but no record is kept as to which organisation the source of threat is connected to. It would be expected that these agencies would want to map paramilitary activity to be able to counter it and inform broader strategic interventions. Housing intimidation figures were also released through 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>8</sup> In 2022 further figures were reported as 1,400 persons being forced from their homes by paramilitaries in a five year period. These figures need to be taken in the context of the small population of Northern Ireland (1.8 million) and noting that many cases of intimidation will not be reported.<sup>9</sup> Whilst official figures on intimidation are falling, CAJ if anything is seeing racist intimidation as just if not more prevalent now than in recent years. We suspect the drop in numbers is more of an indicator of victims not going through particular official schemes to move house.

11. Intimidation, including from housing, has long been a specific criminal offence in Northern Ireland.<sup>10</sup> However, the assessment of ongoing paramilitary activity commissioned by the UK Secretary of State for Northern Ireland in 2015 lists areas of crime it assesses paramilitaries are involved in. Despite the prevalence of housing intimidation, no reference is made to it, nor is there any reference to sectarian or racist crime at all.<sup>11</sup>
12. CAJ has raised particular concerns about the lack of strategic response designed to deal with the links between paramilitarism, housing intimidation and hate crimes. There has been a downplaying of the link between racist crime and paramilitaries in assessments and hence in state strategic policy.
13. Following the assessment of ongoing paramilitary activity by the Secretary of State in 2015 the Northern Ireland Executive (the regional government) adopted a specific

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<sup>7</sup> <https://thedetail.tv/articles/paramilitaries-in-northern-ireland-forcing-hundreds-from-their-homes-each-year>

<sup>8</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>

<sup>9</sup> <https://www.belfasttelegraph.co.uk/news/northern-ireland/almost-1400-people-forced-from-homes-by-paramilitaries/41880846.html?>

<sup>10</sup> <https://www.legislation.gov.uk/apni/1969/29/section/1>

<sup>11</sup> Paragraph 8 of the report lists a range of areas of crime which are attributed to members, including some senior members, of the UDA as “drugs dealing, robbery, extortion and the distribution of counterfeit and contraband goods.” Reference is also made to paramilitary-style assaults, street disorder and violent protests. Paragraph 5 in relation to the UVF states that members, including senior members, are ‘extensively involved’ in organised crime including ‘drug-dealing, extortion and smuggling’ *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).

[https://assets.publishing.service.gov.uk/media/5a80ee03e5274a2e8ab52f76/Paramilitary\\_Groups\\_in\\_Northern\\_Ireland\\_-\\_20\\_Oct\\_2015.pdf](https://assets.publishing.service.gov.uk/media/5a80ee03e5274a2e8ab52f76/Paramilitary_Groups_in_Northern_Ireland_-_20_Oct_2015.pdf)

strategic policy to tackle paramilitary activity. This is known as the (Northern Ireland) Executive Action Plan for *'Tackling Paramilitary Activity, Criminality and Organised Crime'* of July 2016.<sup>12</sup>

14. It is notable that neither housing intimidation nor racist crime are mentioned at all in Northern Ireland Executive's Action Plan for tackling paramilitary activity.

**Recommendation 1: it would be helpful if ECRI could consider recommending that the Northern Ireland Executive (regional government) should amend its strategic policy and Action Plan on Tackling Paramilitary activity to include tackling paramilitary involvement in housing intimidation and racist crime.**

*State response to racist expression in public space*

15. 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 was a shared housing scheme in south Belfast where the placement of paramilitary flags for such a purpose was followed by Catholic families being violently intimidated out of their homes, which the PSNI attributed to the UVF (Ulster Volunteer Force) a loyalist paramilitary group.<sup>13</sup> Paragraph 4 of this submission and its footnote provide examples of posters constituting similar racist intimidation from housing.
16. CAJ recently produced a research report into the broader questions of public authority practices in relation to removing racist and other hate expression from public space, including expression used for intimidation from housing.<sup>14</sup>
17. The report is critical of practices of non-intervention by some relevant public authorities. Specifically, we are critical of the Police Service of Northern Ireland (PSNI) position being grounded in a public order lens 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 raise concerns that this approach provides an incentive to paramilitaries to create a threat to control the type of expression that is permitted in

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<sup>12</sup> ['Tackling Paramilitary Activity, Criminality and Organised Crime'](#) NI Executive Action Plan, July 2016

<sup>13</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>14</sup> [Dealing with hate expression in public space in Northern Ireland May 2022](#)

a particular area.<sup>15</sup> It also does not take into account the harm of racist expression, including when it constitutes intimidation or incitement to racial hatred (neither of which are referenced in the Policy).

18. We recommend 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. The recommendation is framed as follows:

*Hate Crime Review 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.*<sup>16</sup>

**Recommendation 2: it would be helpful if ECRI could consider recommending that the Northern Ireland Department of Justice introduce legislation to implement Recommendation 15 of the Hate Crimes Review which provides for a statutory duty on public authorities to take reasonable steps to remove racist and other hate expression from their property and broader public space.**

### **Racial Profiling in Selective Passport Checks in and out of Northern Ireland**

19. The UK and Irish governments operate a ‘Common Travel Area’ (CTA) whereby there are largely open borders free from passport controls between the two states, including over the Northern Ireland – Republic of Ireland land border. Visa nationals still require visas to enter the alternate jurisdiction.
20. The CTA is a long-standing administrative arrangement. It is not formalised into a treaty but the CTA was reaffirmed post-Brexit Memorandum of Understanding and are referenced in the Northern Ireland Protocol/Windsor Framework to the UK-EU Withdrawal Agreement. The UK government post-Brexit has also made clear commitments there will be continue to be no passport checks on the land border.
21. At the same time, UK immigration law and policy has increasingly diverged from law and policy in the Republic of Ireland. CAJ has raised concerns that this could lead to the UK government relying on hostile environment practices, and ‘in country checks’ within Northern Ireland, as a means of policing movement over the land border, without conducting checks on the border itself. This concern has been borne out in recent data which shows that Belfast has an almost four times pro rata higher rate of immigration checks than London.<sup>17</sup> When this stark statistic was queried, the UK

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<sup>15</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>16</sup> Department of Justice (December 2020), *Hate Crime Legislation in Northern Ireland: Independent Review*, Final Report (hereafter ‘Hate Crime Review’) para 10.76.

<sup>17</sup> [Concerns over ‘disproportionately high’ levels of immigration checks in Belfast - Investigations & Analysis - Northern Ireland from The Detail](#)

- government responded that this was to combat abuse of the common travel area and the land border.
22. The application of the ‘Hostile Environment’ to migrant communities is a UK wide concern. However, in Northern Ireland it has unique impacts and must be contextualised within the island of Ireland, the Common Travel Area (CTA) and the open land border. Linked to this are concerns over the lawfulness of immigration checks carried out on journeys within the CTA.
  23. In the UK, the CTA is provided for in Section 1(3) of the Immigration Act 1971 which precludes the exercise of statutory powers for passport control on internal travel within the CTA, including on the land border.<sup>18</sup>
  24. Despite this selective passport and I.D checks have been evidenced as happening within the CTA often on the basis of quite blatant racial profiling whereby passengers are selected for checks, or for further questioning, on the basis of skin colour or other ethnic indicators. There have also been concerns raised about UK officials abusing non-immigration statutory powers such as the Schedule 7 of Terrorism Act, in order to ensure compliance with immigration checks.<sup>19</sup>
  25. There is no legal basis for passport checks by UK border officials on journeys within the CTA. Most of these checks by UK officers take place on journeys between Northern Ireland and Britain, essentially domestic UK journeys.
  26. Some examples of these racially discriminatory checks include a black British lawyer being singled out four times for passport checks on one return ferry journey;<sup>20</sup> and a black British woman who was not even a passenger being singled out by immigration officers at Belfast City Airport for ‘looking foreign’.<sup>21</sup>
  27. In the Republic of Ireland, under Section 11 of the Immigration Act 2004, Gardaí (Irish Police) have the power to carry out checks on ‘non-nationals’ entering the state from within the CTA. Non-nationals are defined as persons who are not Irish or British citizens or persons who have established EU treaty rights.<sup>22</sup>
  28. In summary, the duty to carry and produce passports does not apply to British, Irish or most EU citizens travelling over the land border but does apply to other non-EEA citizens. The exercise of these powers on the land border into Northern Ireland naturally raises the question: how can Gardaí tell who is Irish or British or an EU citizen simply by looking at them? Concerns have been raised that this law fuels racism and discrimination and that checks are carried out based on ethnic stereotypes about what an Irish, British or EU citizen ‘should’ look like. Senior Gardaí

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<sup>18</sup> [Immigration Act 1971 \(legislation.gov.uk\)](#)

<sup>19</sup> See CAJ [Frontline Lessons for the Future Collaborative research on the impact of immigration law and policy in post-Brexit Northern Ireland June 2022](#) (Chapter 1)

<sup>20</sup> <https://www.theguardian.com/uk-news/2018/jun/11/black-lawyer-accuses-northern-ireland-immigration-of-racial-profiling>

<sup>21</sup> <https://www.newsletter.co.uk/news/woman-awarded-aps2000-in-belfast-city-airport-race-discrimination-case-1218871>

<sup>22</sup> See [Section 11](#) and [Section 12 of the Immigration Act 2004](#) which also requires non-nationals to produce ID on demand anywhere in the Irish state.

have conceded before the Policing (oversight) Authority that not engaging in profiling was a “challenge”.<sup>23</sup>

29. There is a significant degree of cooperation and alignment on immigration control between the UK and Ireland. Senior Gardaí before the Policing Authority in early 2022, whilst avoiding the question as to how passengers are selected for checks, did concede that ‘particular nationalities’ would be a focus of attention at times based on information provided by UK Border Force ‘who work very closely with us’.<sup>24</sup> The Common Travel Area Forum is the body which develops policy between the UK and Ireland on reciprocal immigration checks and other areas concerning the CTA.<sup>25</sup> CAJ requested the minutes of the Forum’s meetings through FOI and received documents which were redacted to the point of being unreadable. It is extremely concerning that the collaboration between the UK and Ireland on immigration control, is shrouded in secrecy and lacking in transparency. Particularly given the links to accusations of racial profiling and discriminatory practices.
30. These concerns regarding racial profiling in selective passport checks have been well documented in the media.<sup>26</sup>

**Recommendation 3: it would be helpful if ECRI could consider recommending that the UK authorities cease immediately the practice of selective passport controls in journeys in and out of Northern Ireland, given the concerns regarding racial profiling. The UK should also be transparent in its dealings with the Irish authorities and not in practice ‘subcontract’ checks on the land border to Gardaí (Irish Police).**

**CAJ, November 2023**

Committee on the Administration of Justice (CAJ)  
1st Floor, Community House, Citylink Business Park  
6A Albert Street, Belfast, BT12 4HQ

Tel: (028) 9031 6000

Email: [info@caj.org.uk](mailto:info@caj.org.uk)

Website: [www.caj.org.uk](http://www.caj.org.uk)

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<sup>23</sup> [February 2022 - Policing Authority meeting with the Garda Commissioner in public - YouTube](#)

<sup>24</sup> [February 2022 - Policing Authority meeting with the Garda Commissioner in public - YouTube](#)

<sup>25</sup> The CTA Forum is referenced in the [Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland \(publishing.service.gov.uk\)](#)

<sup>26</sup> <https://www.irishexaminer.com/opinion/commentanalysis/arid-30945668.html>;

<https://www.irishtimes.com/news/social-affairs/claim-of-racial-profiling-at-border-by-garda-continues-to-cause-concern-1.4770546>; <https://thedetail.tv/articles/ethnic-minorities-fear-being-rationally-profiled-during-immigration-checks>; <https://www.thejournal.ie/cross-border-immigration-racial-profiling-checks-4814767-Sep2019/>