

**S453 Submission from the  
Committee on the Administration of Justice (CAJ) to the  
Council of Europe Advisory Committee on the  
Framework Convention for the Protection of National Minorities  
on the 4th Report of the UK**

**March 2016**

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 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 international human rights obligations.

CAJ welcomed the opportunity to meet with a delegation from the Advisory Committee in Belfast earlier in the month. This written submission focuses on the following areas:

**Legislative and institutional developments affecting application of the Framework Convention in the domestic legal order:**

- Treatment of treaty-based obligations
- Minority rights and vetoes in the Northern Ireland settlement
- Vetoes and misuse of the ‘good relations’ duty
- Threats to the Equality Duty – the ‘Equality and Good Relations’ Commission
- Defining sectarianism in law and baseline data

**Anti-poverty, austerity and structural adjustment**

- Anti-poverty Strategy on the basis of objective need
- Austerity and the Stormont House and Fresh Start Agreements

**Policing and criminal justice**

- Incitement to hatred legislation in Northern Ireland
- NI Stop and Search powers and ethnic monitoring

**Irish-English Bilingual Signage**

- Bilingual signage and local authorities

## Legislative and institutional developments affecting application of the Framework Convention in domestic legal order

### Treatment of treaty-based obligations

1. As the Advisory Committee will be aware the general practice of the UK is not to directly incorporate treaties into domestic law. However, legislative changes to ensure compatibility with treaties are to take place prior to ratification and it has also been established as a principle of legal policy that, where possible, legislation should be interpreted compatibly with treaty based obligations. It is also the case that, as rightly set out by the NI Human Rights Commission, as a matter of international law the UK *“is obliged to respect and protect all of the human rights in the treaties that it has committed to. That duty extends across all the relevant parts of government and parliament. For Northern Ireland it embraces not only [the UK Parliament at] Westminster but also the [Northern Ireland] Executive and the Assembly, as well as local government.”*<sup>1</sup>
2. In CAJ’s experience however the binding nature of treaty-based obligations on public authorities is regularly misunderstood in Northern Ireland. At worst a position is taken that treaty-based obligations, not enshrined in domestic law, can essentially be ignored. For example, when CAJ in 2013 launched a research report, which included a case study on minority languages, the Chief Executive of the Equality Commission gave a formal response in which she stated: *“The European Charter for Regional and Minority Languages does not oblige the [Equality] Commission and/or Public Authorities to promote any rights that derive from unincorporated international agreements...”*<sup>2</sup> Whilst this position is mistaken it nevertheless appears to have significant implications on the Commissions approach to its functions, which include advising other public authorities.

### Incorporation of the ECHR

3. The 1998 Belfast/Good Friday Agreement, the main agreement of the NI peace settlement, took a different approach to general UK practice in that it guarantees certain rights would be incorporated into Northern Ireland law.

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<sup>1</sup> <http://www.nihrc.org/about-human-rights/human-rights-law-and-standards>.

<sup>2</sup> Equality Commission for Northern Ireland Launch of CAJ’s report on Unequal Relations? Response from Equality Commission, 11 June 2013, page 10.

Firstly the Agreement, itself a (UK-Ireland) bilateral treaty approved by referendum, provides that the UK must incorporate the ECHR into Northern Ireland law.<sup>3</sup> This commitment was legislated for Northern Ireland (as well as for Great Britain) under the Human Rights Act 1998. It is a matter of serious concern that the current UK government wishes to repeal the Human Rights Act and replace it with a 'British Bill of Rights' that would not fully incorporate the ECHR. In addition to the general regression in rights protection, such a move would also constitute a clear breach of the Belfast/Good Friday Agreement.

### **Bill of Rights for Northern Ireland**

4. The second element of the Belfast/ Good Friday Agreement was the commitment to legislate for a Bill of Rights addressing the particular circumstances of Northern Ireland. The Bill of Rights was to incorporate rights additional to the ECHR and hence would constitute a vehicle to give domestic effect to minority rights protected by the Framework Convention. The NI Human Rights Commission discharged its mandate under the Agreement to advise on the content of the NI Bill of Rights in 2008. Public opinion polls have consistently demonstrated high levels of support for a Bill of Rights in Northern Ireland in Protestant and Catholic communities and beyond.<sup>4</sup> Unionist parties have opposed the enactment of a bill of rights based on the Human Rights Commission's advice. Despite calls to do so from UN and Council of Europe treaty bodies the UK government has not legislated for the NI Bill of Rights and has instituted a pre-condition, not contained in the 1998 Agreement, of 'political consensus' among NI parties before it will do so.

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<sup>3</sup>Treaty Series No. 50 (2000) Cm 4705; the Agreement consisted of the British-Irish Agreement between the two sovereign states and the Multi-Party Agreement between participant political parties. The British-Irish Agreement (Article 2) affirms the solemn commitment of the UK government to support and implement the sections of the Multi-Party Agreement, which correspond to it. Paragraph 2 of the Rights, Safeguards and Equality of Opportunity section of this Agreement states: *'The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency.'*

<sup>4</sup> A Market Research Northern Ireland opinion survey published by the Northern Ireland Human Rights Commission in 2004 found that a large majority of respondents (87 per cent) would support a proposed Bill of Rights. Both, Protestants (87 per cent) and Catholics (85 per cent) were in agreement with the concept of having a Bill of Rights that reflects the particular circumstances of Northern Ireland (Progressing a Bill of Rights for Northern Ireland: An Update, Belfast: 2004); in July 2011 a poll of 1000 persons conducted by Ipsos MORI found 80%+ of respondents thought a Bill of Rights for Northern Ireland was important among supporters of all the main political parties (SF 88%, SDLP 86%, DUP 84%, UUP 83%, Alliance 81%) (in Human Rights Consortium 'Bill of Rights for Northern Ireland, Overdue' Belfast, 2011, page 3).

## **Ministerial Powers to direct compliance with International Obligations**

5. Under section 29 of the Northern Ireland Act 1998 (the main implementation legislation of the Belfast/Good Friday Agreement) the Secretary of State (a UK Minister) can direct that a NI Minister or department take any action within their powers if it is required for the purpose of giving effect to international obligations. The Minister can also direct that any action proposed by a NI Minister or department not be taken if it is incompatible with international obligations. This power, for example, could be invoked to compel NI ministers to contribute to UK treaty body reports on areas of competence. As the Advisory Committee will be aware a number of treaty-reports, including the current report, have not contained information on matters within the competence of the NI Executive.
  
6. In recent years local government in NI has been overhauled with the number of municipal authorities reduced from 26 to 11, with some new powers and safeguards being vested in the new Councils. Under s107 of the new legislation (the Local Government Act (Northern Ireland) 2014), the minister for local government<sup>5</sup> has a similar power to the above to direct local councils to act compatibility with international obligations. Such powers could be exercised to enforce rights protected by the Framework Convention, in areas referenced later in this submission such as preventing funding by local councils of events likely to involve racist expression, and ensuring the provision for bilingual signage.

### **The Advisory Committee may wish to:**

- **Reiterate the binding nature of the Framework Convention on public authorities;**
- **Seek assurances the ECHR will not be disincorporated from NI Law, and for progress on the Bill of Rights for Northern Ireland as a manner of ensuring incorporation of FCNM provisions in the domestic legal order;**
- **Advocate ministerial powers be exercised to ensure compliance with international obligations when required for the implementation of duties under the FCNM;**

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<sup>5</sup> Currently under the NI Department of Environment, but scheduled to transfer to a new NI Department of Communities.

## **Minority rights and vetoes in the Northern Ireland settlement**

7. The 1998 Belfast/Good Friday Agreement established the Northern Ireland Assembly a power sharing unicameral legislature composed of 108 Members of the Legislative Assembly (MLAs). MLAs have to designate as ‘unionist’ (referring to the Union with Great Britain), ‘nationalist’ (referring to Irish nationalism) or ‘other’. There is no broader provision for minority groups beyond this. A system of mandatory power-sharing coalition is operated whereby any party with sufficient MLA’s to warrant a minister is entitled to participate in the NI Executive. There is a First Minister and Deputy First Minister who must act jointly in all official matters and who have been a unionist and nationalist respectively. In the most recent elections in 2011 the largest party was the Democratic Unionist Party (DUP- unionist) with 38 MLAs, followed by Sinn Féin (SF, nationalist) 29 MLAs. The Ulster Unionist Party (UUP, unionist) had 16 MLAs, the Social Democratic and Labour Party (SDLP, nationalist) 14 MLAs and the Alliance (other) 8 MLAs.

### **NI Assembly ‘Petitions of Concern’**

8. The previous Northern Ireland Parliament, which ran from the establishment of Northern Ireland in 1921 until its suspension in 1972, was under the continuous control of the official Unionist party, with the nationalist minority not involved in the exercise of executive power. The 1998 Agreement in addition to unionist-nationalist power sharing also provided for a ‘Petition of Concern’ mechanism, whereby if 30 MLAs signed a petition a vote would be required on a ‘cross community’ basis with the support of both nationalist and unionist MLAs.
9. Petitions of Concern were introduced to protect minority rights. There are examples of Petitions of Concern being used for this purpose. For example, during the passage of the aforementioned local government bill an amendment sought to remove safeguards which give the statutory equality duty primacy over duties to promote ‘good (community) relations’ (insofar as these duties relate to the community planning functions of municipal authorities). This change was however blocked by a petition of concern by the nationalist parties.<sup>6</sup> However, there are increasingly examples of Petitions of Concern being deployed to block minority rights provisions in the Assembly, this includes recently votes on marriage equality for persons of minority sexual orientation, supported by the majority of MLAs, but defeated by a petition of concern from the DUP.

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<sup>6</sup> Official Report (Hansard) Northern Ireland Assembly Further Consideration Stage (1 April 2014). See paragraph 14 of this submission for further details in relation to the statutory equality duty.

On a previous occasion an attempt to amend the law to remove an obstacle to provision for caravan sites for the Irish Traveller community was also blocked by a petition of concern.<sup>7</sup> The use of the Petition of Concern to block minority rights provisions is facilitated by there being no criteria which have to be met for a Petition of Concern, beyond 30 MLAs signing the Petition.

### **Local government ‘Call in Mechanism’**

10. In relation to the new arrangements for local government the legislation also provided for a minority rights veto, known as the ‘call in’ mechanism. Both unionists and nationalists constitute majorities in different local government districts.
11. The ‘Call In’ mechanism provides for key decisions, when the decision has been ‘called in’ by 15% of representatives, to be reconsidered and only approved if passed by a ‘qualified majority’ of 80% of voting municipal representatives. Unlike the Petition of Concern the primary legislation does set out criteria, namely that the decision in question would ‘disproportionately affect adversely a section of inhabitants’ of the local government district. Whilst decision-making is to be informed by a legal opinion this terminology neither draws on recognised concepts nor is not further elaborated on in the legislation and was subject to criticism by CAJ and the local government Committee of the NI Assembly for lacking legal certainty.
12. Secondary legislation was recently presented to the Assembly to increase legal certainty over the mechanism.<sup>8</sup> This would have tied the ‘call in’ to circumstances where a legal opinion indicates a risk and is then, among other matters, incompatible with the ECHR or the Council’s equality scheme insofar as it relates to the equality duty contained in s75(1) of the Northern Ireland Act 1998. This formulation would have provided a level of protection for minority rights at local government level. Whilst this position was supported by other parties (SF, UUP, SDLP & Alliance), it was not supported by the DUP who tabled a Petition of Concern to prevent it becoming law. The DUP told the Assembly that their concerns were in particular based on opposition to equality duties being part of the call in mechanism.

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<sup>7</sup> This occurred during the passage in the Northern Ireland Assembly of new caravans legislation in 2011. For analysis see paragraphs 46-51 of the NI Human Rights Commission’s Parallel Report to the Advisory Committee in 2011. <http://www.nihrc.org/Publication/detail/parallel-report-on-framework-convention-on-national-minorities>

<sup>8</sup> The proposed Local Government (Standing Orders) Regulations (Northern Ireland) 2016.

## **NI Executive: vetoes over ‘significant or controversial’ ministerial actions**

13. Following the 2006 St Andrews Agreement amendments were made to the institutional arrangements which essentially ensure that certain decisions deemed ‘significant or controversial’ could not be taken by individual ministers but had to be first subject to the Agreement of the full Executive. Whilst this arrangement was not designed to be a minority rights provision, it has, in common with other mechanisms the potentially to be used to prevent progress on minority rights issues. For example legislation and a strategy to protect the Irish language, which was also committed to under the St Andrews Agreement, have been consulted on but in recent weeks the NI Executive prevented the adoption of the strategy and the introduction of the legislation into the NI Assembly. This has also been the case with proposed legislation to replace the system of academic selection in schools, and hence tackle inequalities in educational attainment.

### **The Advisory Committee may wish to ask:**

- **For the relevant authorities in Northern Ireland to review the operation of the aforementioned vetoes and reformulate them in a manner which (consistent with the FCNM and other human rights standards): 1) protects minority rights and 2) cannot be used to block minority rights initiatives;**

### **Vetoes and the misuse of the ‘Good Relations’ duty**

14. The Belfast/Good Friday Agreement 1998 provided for a statutory equality duty across nine equality grounds, whereby public authorities were obliged to promote equality of opportunity across these grounds.<sup>9</sup> This was legislated for under s75 of the Northern Ireland Act 1998 and included duties on public authorities to equality impact assess new or proposed policies, to ensure that they would not adversely impact on equality of opportunity for any one of the nine categories.
15. Whilst not provided for in the Agreement the legislation also introduced a counterpart duty to promote ‘good relations’ across the grounds of religious belief, political opinion and racial group. All three of these grounds are indicators of ethnicity in NI. Following concerns from NGOs and trade unions that the ‘good relations’ duty could be interpreted as one whereby equality and minority rights initiatives were blocked on grounds they would lead to ‘community tensions’

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<sup>9</sup> Namely (in summary): gender, age, religious belief, political opinion, racial group, disability, sexual orientation, marital status and dependants.

safeguards were placed on the face of the legislation to ensure that the good relations duty was exercised ‘without prejudice’ to the equality duty and the duties to assess the impacts of policies were to be applied to the equality limb of the duty only. Since this time there have been a number of attempts to remove or water down these safeguards, including a recommendation in 2007 that public authorities conduct ‘good relations’ impact assessments as well as equality impact assessments despite there being no requirement in the legislation to do so.<sup>10</sup>

16. Whilst the intention behind the Good Relations duty should be to tackle racism (including sectarianism), it has often not been interpreted in this way in NI. By contrast the good relations duty in Great Britain is defined in legislation in such a manner as primarily a duty to ‘tackle prejudice’ and ‘promote understanding’, across all equality categories.<sup>11</sup> It is therefore in Great Britain a clear statutory duty to tackle racial prejudice and for intercultural dialogue. However, in Northern Ireland the duty has not yet been defined in law and regularly suffers from a lay interpretation whereby a policy proposal is considered to have ‘breached’ the good relations duty on the basis that it is politically contentious, or even because there are differences in opinion and ‘attitudes’ across communities on the subject matter.
17. The Advisory Committee in its previous monitoring report cites examples of when the ‘good relations’ duty had been used to obstruct the provision of bilingual Irish-English signage.<sup>12</sup> This phenomenon has continued in relation to promotional measures for the Irish language. This includes a practice of including differing attitudes across political parties or communities towards the language as ‘evidence’ that the proposed measure will negatively impact on ‘good relations’. For example a recent impact assessment by a municipal authority contrasted statistics in relation to “persons who are likely to be in favour of or against the use of [the Irish language].”<sup>13</sup>

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<sup>10</sup> For further details see CAJ ‘Unequal Relations?’ 2013, page 29. <http://www.caj.org.uk/contents/1184>

<sup>11</sup> s149(5) of the Equality Act 2010. <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

<sup>12</sup> “The Advisory Committee has been informed that, in some instances, the need for keeping good relations has been used as justification for not implementing provisions in favour of persons belonging to minorities, such as the erection of bilingual signs... Additionally, it finds it problematic that the official policy is to limit the erection of such signs to certain areas where the issue would not raise controversies. The Advisory Committee is concerned that this approach is not in line with the spirit of the Framework Convention ... the aim of which is to value the use of minority languages... with a view to promoting more tolerance and intercultural dialogue in society” Council of Europe (2011) Advisory Committee on the Framework Convention for National Minorities (Third Opinion on the UK) ACFC/OP/III(2011)006 (adopted 30 June 2011) paragraphs 126 and 158.

<sup>13</sup> See CAJ’s submission to Mid Ulster District Council Consultation on the Equality Impact Assessment (EQIA) of the draft Irish Language Policy, September 2015, page 7.

In referencing perceptions of the Irish language the EQIA then goes on to conclude “that it does not matter what the merits are of a perception or sentiment, rather that if a perception exists it has to be acted upon.” CAJ however cautioned that in our view:

....a perception should have some reasonable and legitimate basis for it to be acted upon. Otherwise an entirely unqualified approach runs the risk that perceptions based on prejudice or intolerance can become the basis for policy changes. The approach in the draft EQIA would set an extraordinary precedent for future policy making given it implies that even views that are racist, sectarian, sexist, homophobic or disablist should be factored into policy making.”<sup>14</sup>

18. The other major policy area where there are long term concerns about the misuse of the ‘good relations’ duty are socioeconomic rights initiatives that are based on providing resources on the basis of objective need. This has particularly been contested in housing, regeneration and anti-poverty type initiatives. The poverty gap between Protestants and Catholics has widened in the decade between 2002 and 2012, with 32.5% of Catholics currently in poverty compared to 18.5% of Protestants.<sup>15</sup> There are also patterns of disadvantage within minority ethnic communities. This means that whilst anti-poverty measures will benefit all those in objective need, in most (but not all) policy areas proportionately more monies are likely to go to Catholics (and potentially others) than Protestants given greater need. There has however been opposition to approaches on objective need, at times on grounds it will damage ‘good relations’.<sup>16</sup>

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<sup>14</sup> As above, page 8.

<sup>15</sup> Kent, Gabi “ Shattering the silence...” *Critical Social Policy* 2016, Vol. 36(1): 124–141.

<sup>16</sup> See for example ‘*Is Stormont’s £80m poverty fund deadlocked over cash going to Catholics or Protestants?*’ *The Detail* 20 October 2013 which reported ‘Social Investments Fund’ (SIF) projects which have been presented by officials alongside official deprivation statistics had not been signed off due to apparent disagreements as to whether funding should be allocated on the basis of objective need. CAJ raised concerns that if decisions had been taken not to sign off on SIF funding allocations based on objective need due to objections that Catholic/nationalist areas would receive proportionately more monies this would indicate a failure to abide by commitments to promote equality of opportunity in the government department’s Equality Scheme. See also ‘*Unequal Relations?*’ CAJ 2013 case study on the good relations duty and socioeconomic inequality (pp48-55). This cites, for example, Department of Education proposals to use Free School Meals Entitlement (a social security benefit available to families in poverty and disadvantage) as a priority criteria for schools admissions. In the context that there are more Catholic than Protestant children in poverty and entitled to Free School Meals the Equality Commission criticised the proposals as having an ‘adverse impact’ on ‘good relations between the two main communities’ and urged the Department to consider alternative policies and mitigating measures in this context.

19. The Equality Commission for Northern Ireland, at the request of CAJ and others, recently used its statutory equality duty enforcement powers to investigate the Department of Social Development in relation to housing policy. One of the policies examined was a 'housing-led approach to regeneration' pilot programme for six disadvantaged areas. The Department rather than selecting areas on the basis of objective need, instead selected three mainly nationalist and three mainly unionist areas. Some of the selection criteria which were applied were the direct opposite of objective housing need. This included areas with "significant levels of empty properties" and areas that "have experienced a decline in housing demand". It also included areas which are in "proximity to places where there is housing need" (given residential segregation in Northern Ireland this essentially means diverting resources from areas of actual housing need, to areas adjacent to them makes it unlikely that those in housing need can safely move to these areas.) Statistically, as recognised Equality Commission, more housing need is presently concentrated within those who are nationalists and others.<sup>17</sup> There has been particular focus on the acute housing situation of Catholics in north Belfast. Further to the work of residents and the Participation and Practice and Rights (PPR), this issue has received considerable international attention from the Council of Europe and UN human rights machinery.<sup>18</sup>
20. The Equality Commission investigation uncovered that the Department's position had been that *"To ensure equality of opportunity and promote good relations it was felt that a community balance should be sought across pilot areas. [paragraph 2.6]"*<sup>19</sup> Essentially the Department had intentionally set out to obtain 'parity' for mainly unionist with mainly nationalist areas, and had sought to justify this approach citing not only good relations but also 'equality'. The Equality Commission found the policy constituted a breach of the Department's Equality Scheme as the policy had not been subjected to equality screening. Had this procedural requirement been adhered to the equality duty would have obliged examination of alternative policies given as the selection of areas was not based on equality of opportunity, itself a concept directly linked to objective need.

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<sup>17</sup> See findings of Equality Commission commissioned research into key inequalities in housing at: <http://www.equalityni.org/KeyInequalities-Housing>

<sup>18</sup> See statements of Council of Europe Human Rights Commissioner, Thomas Hammarberg, 2012, CESCR in 2009 and the UN Special Rapporteur on the Right to Adequate Housing, Report of Mission to the United Kingdom, 30 December 2013 at <http://www.caj.org.uk/contents/1403>

<sup>19</sup> Equality Commission for Northern Ireland 'Investigation Report under Schedule 9 of the Northern Ireland Act 1998, Department for Social Development: Housing Policy Proposals' November 2015.

21. There is potential for a properly defined ‘good relations’ duty to contribute to implementing Article 6 of the Framework Convention. Article 6 provides for parties to encourage a spirit of tolerance, intercultural dialogue, mutual respect and understanding, as well as taking measures to protect persons who may be subject to threats or acts of discrimination, hostility and violence as a result of their ethnic, cultural, linguistic or religious identity. As things stand in Northern Ireland however the Good Relations duty is not defined in law and significant problems occur when lay ‘good relations impact assessments’ are undertaken and then used as justification for obstructing rights-based policies.
  
22. The Equality Coalition (a network of equality groups co-convened by CAJ and the trade union UNISON) commissioned an expert paper on the defining of Good Relations in law.<sup>20</sup> This paper argued that the current good relations paradigm had failed to generate an effective response to racism and was becoming the ‘lowest common denominator’ in unionist/nationalist power-sharing. The paper advocated for legal certainty over the concept, that the concept support equality and human rights for all in Northern Ireland, and that it follow developments in Great Britain, given it seemed *“bizarre to further institutionalize a form of good relations in Northern Ireland that is increasingly divergent from the model in Great Britain (GB).”* To this end the paper cautioned against the risk of an undefined concept of Good Relations gaining further power under the NI Executive’s community relations strategy (Together: Building a United Community – T:BUC) concluding:

In terms of good relations in particular it appears nonsensical to further institutionalize and legalize a paradigm that cannot define itself and which has failed to situate itself in terms of international law and standards...

In absence of any existing or likely cross-community consensus on a definition for good relations in Northern Ireland, adapting the statutory good relations duty on public bodies in the GB definition is the most useful available: good relations ...means having regard, in particular, to the desirability of —(a) tackling prejudice, and (b) promoting understanding. This definition should inform any further development of the good relations paradigm in Northern Ireland.

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<sup>20</sup> McVeigh, Robbie ‘Good Relations: Towards a Definition in Law’ October 2014  
[http://www.caj.org.uk/files/2015/12/08/GOOD\\_RELATIONS\\_IN\\_NI-\\_TOWARDS\\_A\\_DEFINITION\\_IN\\_LAW\\_Oct\\_2014.pdf](http://www.caj.org.uk/files/2015/12/08/GOOD_RELATIONS_IN_NI-_TOWARDS_A_DEFINITION_IN_LAW_Oct_2014.pdf)

23. The Advisory Committee previously observed that in NI *“the concept of ‘good relations’ [has] apparently [developed] to substitute the concept of intercultural dialogue and integration of society.”*<sup>21</sup> As alluded to above the ‘good relations’ duty in Great Britain is defined as primarily concerning tackling prejudice and promoting understanding, which is compatible with provisions in Article 6 FCNM. As well as CAJ the NI legislature has also called for the good relations duty to be defined in law.<sup>22</sup> The NI Human Rights Commission has advised that the good relations legislation be amended to comply with human rights laws and standards.<sup>23</sup> The Equality Commission has also urged that good relations be defined in law and has stated that the following elements should be considered in the formulation of such a definition:

Good relations could be said to exist where there is:

- a high level of dignity, respect and mutual understanding
- an absence of prejudice, hatred, hostility or harassment
- a fair level of participation in society.

[The Equality Commission continues:] The definition contained in Section 149 of the Equality Act 2010 in Great Britain is also useful in that it provides public authorities there with direction on how they should comply with their duty to have due regard to the need to foster good relations, as follows:

*(5) - Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:*  
*(a) tackle prejudice, and*  
*(b) promote understanding*<sup>24</sup>

#### **Advisory Committee may wish to:**

- **Urge that steps are taken to ensure that the good relations duty under s75(2) of the Northern Ireland Act is not used in a manner which conflicts with the duties to promote full and effective equality under Article 4(2) FCNM and the duties to promote conditions to preserve minority linguistic identity under Article 5 FCNM;**

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<sup>21</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, ‘Third Opinion on the United Kingdom for the Protection of National Minorities’ ACFC/OP/III (2011)006, para 126.

<sup>22</sup> Northern Ireland Assembly, Committee of the Office of the First Minister and deputy First Minister ‘Report on the Inquiry into Building a United Community’ <http://www.niassembly.gov.uk/assembly-business/committees/office-of-the-first-minister-and-deputy-first-minister/reports/report-on-the-inquiry-into-building-a-united-community/>

<sup>23</sup> NIHRC, Advice to the Committee for the Office of the First Minister and deputy First Minister inquiry on Building a United Community, paragraph 63.

<sup>24</sup> Equality Commission advice on Good Relations in Local Councils, September 2015.

- **State that that it is not compatible with the FCNM to cite ‘attitudes’ opposing minority rights provision as a justification for not implementing FCNM duties;**
- **Urge steps are taken to ensure that good relations is properly defined in law in a manner consistent with Article 6(1)/(2) FCNM and other human rights standards;**

### **Threats to the Equality Duty – the ‘Equality and Good Relations’ Commission**

24. As alluded to above further development during the reporting cycle was the NI Executive’s Community Relations strategy (Together: Building a United Community – T:BUC). In addition to a number of project based initiatives the T:BUC strategy contained a proposal to change the Equality Commission into an ‘Equality and Good Relations Commission’ and to amend Equality Impact Assessments so that they would now also formally include ‘good relations’ considerations. This risks being interpreted as formalising an obligation to conduct ‘good relations impact assessments’ without the concept being defined. There is no commitment in the strategy for ‘good relations’ to be defined.
25. It is welcome that following the concerns of equality groups subsequent to the publication of the T:BUC strategy that the above proposal would undermine and weaken the equality duty, the proposals have been shelved during the current mandate. There remains a risk however that there will be further attempts to take them forward in the future. As above, in CAJ’s view *a properly defined and operationalised* ‘good relations’ type-duty can complement the equality duties, contribute towards the implementation of the FCNM, and be extended across all equality grounds. However, there is no commitment in T:BUC to do this, rather there is a risk the good relations duty will be further formalised as essentially a tool for assessing the lay ‘impacts’ of policy on community relations, risking further misuse of the concept as a veto over rights-based policy.
26. CAJ concurs with the NI Human Rights Commission’s position, in relation to the above proposal, that any structural changes must be non-retrogressive and made with the express objective of increasing the protection and promotion of equality, non-discrimination, tolerance, mutual respect and understanding in NI.<sup>25</sup>

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<sup>25</sup> NIHRC, Advice to the Committee for the Office of the First Minister and deputy First Minister inquiry on Building a United Community, paragraph 74.

### The Advisory Committee may wish to:

- **Seek assurances there will be no retrogression in relation to the s75(1) statutory Equality Duty;**
- **Urge that any changes to structural arrangements be made with the express objective of increasing the protection and promotion of equality, non-discrimination, tolerance, mutual respect and understanding in NI;**

### Defining sectarianism in law and baseline data

27. It is welcome that in previous reports both the Advisory Committee and the UN Committee for the Elimination of all forms of Racial Discrimination have both emphasised that sectarianism in Northern Ireland is to be treated as a form of racism rather than simply a limited to consideration of political factionalism.<sup>26</sup>
28. It is in this context that the terms Protestant and Catholic tend to be used in NI as ethnic categorisations rather than indicators of actual religious belief or practice. There are still a number of issues with the way in which baseline data on ethnicity is presented in Northern Ireland. Often analysis of the ‘two main communities’ will either not reference smaller ethnic groups at all, or will place black and minority ethnic groups, in all their diversity, into a sole category of ‘other’. Paradoxically analysis of minority ethnic groups tends to exclude the ‘two main communities’. As recently stated in Equality Coalition commissioned research:

It is important that the concept of sectarian discrimination is made ‘fit for purpose’ in terms of the provision of baseline data. Currently the census defines ethnicity primarily in terms of *colour* – thus 98.21% of Northern Ireland residents are defined solely as ‘white’.<sup>27</sup> This does nothing to capture the ethnic complexity of Northern Ireland and nothing to help construct policy or practice on ethnicity. There is an urgent need to find a methodology which would acknowledge the ethnic dimensions of the communal division in Northern Ireland, rather than understanding ‘ethnicity’ as merely another word for ‘non-whiteness’.

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<sup>26</sup> Following the UN Committee on the Elimination of Racial Discrimination (2011) and Council of Europe (2011). As CERD suggests: ‘Sectarian discrimination in Northern Ireland and physical attacks against religious minorities and their places of worship attract the provisions of ICERD in the context of “inter-sectionality” between religion and racial discrimination; as the Advisory Committee suggests: ‘[treating] sectarianism as a distinct issue rather than as a form of racism [is] problematic, as it allows sectarianism to fall outside the scope of accepted anti-discrimination and human rights protection standards’.

<sup>27</sup> See NI Census 2011: Table KS201NI: Ethnic Group.

...The NI census constructs 98% as being 'white' and presents this as an adequate analysis of ethnicity in Northern Ireland – this, of course, says nothing about Protestant and Catholic differences nor indeed anything about the largest section of the NI minority ethnic population (Polish and other Eastern European) who happen to be mostly 'white' (Without getting too mired in the contradictions – current practice ends up constructing Irish Travellers – who are in terms of skin colour perhaps the 'whitest' ethnic group in Northern Ireland - as 'non-white' and Roma – victims of pogroms and constantly racialized as 'black' in Romania - as 'white'.)<sup>28</sup>

29. It is welcome that the NI Executive's T:BUC strategy commits to defining sectarianism in NI legislation. In the present context despite the term being regularly used by public authorities there is often no official definition or restrictive or vague definitions are adopted, that tend to defer to limited interpersonal *manifestations* of sectarianism (e.g. hate crimes) rather than defining sectarianism per se.<sup>29</sup>
30. The Council of Europe specialist body in the field, the European Commission Against Racism and Intolerance (ECRI) in its recommendation on key elements of legislation against racism and racial discrimination, defines racism as follows:

“racism” shall mean the belief that a ground such as race,<sup>30</sup> colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.<sup>31</sup>

31. This definition could be drawn upon and tailored to define sectarianism in Northern Ireland for example as follows:

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<sup>28</sup> Bell and McVeigh 'A Fresh Start for Equality? The Equality Impacts of the Stormont House Agreement on the 'Two Main Communities' Equality Coalition, March 2016.

<sup>29</sup> Section 37 of the Justice (Northern Ireland) Act 2011 prohibits chanting which is of a 'sectarian' nature at major sporting occasions, despite discussion during its legislative passage ultimately neither the Justice Act nor other legislation provide a definition of sectarianism. The PSNI, in its published 'hate crimes definitions' states *"The term 'sectarian', whilst not clearly defined, is a term almost exclusively used in Northern Ireland to describe incidents of bigoted dislike or hatred of members of a different religious or political group. It is broadly accepted that within the Northern Ireland context an individual or group must be perceived to be Catholic or Protestant, Nationalist or Unionist, or Loyalist or Republican."* The T:BUC Strategy itself alludes to sectarianism as *"threatening, abusive or insulting behaviour or attitudes towards a person by reason of that person's religious belief or political opinion; or to an individual as a member of such a group."*

<sup>30</sup> The recommendation elaborates in relation to the use of the term race: *"Since all human beings belong to the same species, ECRI rejects theories based on the existence of different "races". However, in this Recommendation ECRI uses this term in order to ensure that those persons who are generally and erroneously perceived as belonging to "another race" are not excluded from the protection provided for by the legislation.*

<sup>31</sup> Council of Europe CRI(2003)8 ECRI General Policy Recommendation No. 7 On National Legislation To Combat racism And Racial Discrimination Adopted On 13 December 2002.

“Sectarianism” shall mean the belief that a ground such as religion, political opinion, language, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.

32. The Institute of Conflict Research has also developed the following definition of sectarianism in Northern Ireland:

Sectarianism should be considered as a form of racism specific to the Irish context. Sectarianism is the diversity of prejudicial and discriminatory attitudes, behaviours and practices between members of the two majority communities in and about Northern Ireland, who may be defined as Catholic or Protestant; Irish or British; Nationalist or Unionist; Republican or Loyalist; or combinations thereof.<sup>32</sup>

**The Advisory Committee may wish to urge:**

- **That to assist with the effective implementation of the FCNM a definition of sectarianism in legislation be adopted and that the definition draws on international standards relating to racism;**
- **That baseline data on ethnicity in Northern Ireland is integrated across all ethnic groups, with specific attention paid to the diversity of black and minority ethnic groups;**

## **Anti-poverty, austerity and structural adjustment (FCNM Article 4)**

### **Anti-Poverty Strategy on basis of objective need**

33. Further to a key Agreement in the peace settlement – the 2006 (UK-Ireland) St Andrews Agreement – a statutory duty was placed on the Northern Ireland Executive to adopt an anti-poverty strategy on the basis of objective need. This is provided for in Section 28E of the Northern Ireland Act 1998 (as amended by the s16 of the Northern Ireland (St Andrews Agreement Act 2006). This reads:

#### **28E Strategy relating to poverty, social exclusion etc**

- (1)The Executive Committee shall adopt a strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on objective need.
- (2)The Executive Committee—
- (a) must keep under review the strategy; and
  - (b) may from time to time adopt a new strategy or revise the strategy

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<sup>32</sup> Jarman, N. 2012. ‘Defining Sectarianism and Sectarian Hate Crime’ Belfast: ICR, page 10.

34. We believe the strategy is a mechanism whereby the commitment to adequate measures to promote full and effective equality in the economic and social sphere, in accordance with Article 4(2) of the Framework Convention can be taken forward, particularly given the strategy must be framed in terms of objective need. No such strategy was adopted in the current mandate and CAJ launched successful Judicial Review proceedings against the NI Executive. The High Court in Belfast on 30<sup>th</sup> June 2015 held that:

The Executive Committee of the Northern Ireland Assembly has acted unlawfully by failing to adopt an identifiable strategy for the purpose of section 28E of the Northern Ireland Act 1998.<sup>33</sup>

35. In addition to holding that ‘no such’ anti-poverty strategy had in fact been adopted by the Northern Ireland Executive and its legal obligation had been breached the judgement elaborated on the concepts of a ‘strategy’ and ‘objective need’:

[a] strategy must be identifiable, it must be complete, it must have a start, a middle and an end, it must aim to be effective, its effectiveness must be capable of measurement and the actions which are taken in attempting to implement that strategy must be referable back to that overarching strategy..., it must be a written document(s).

The concept of ‘objective need’ is obviously central to the statutory provision the intention of which is to remove or reduce the scope for discrimination by tying the allocation of resources to neutral criteria that measure deprivation irrespective of community background or other affiliation...It is difficult to see how the Executive could develop and deliver a Section 28E compliant strategy without adopting some agreed definition of objective need but that will be a matter for the Executive in due course.<sup>34</sup>

36. Following the judgement we are awaiting the adoption of the anti-poverty strategy, which is now likely to occur in the new mandate following the May 2016 elections.

**The Advisory Committee may wish to ask the UK for an update on the progress of the adoption of an Anti-Poverty Strategy for Northern Ireland and seek assurances that definitions of objective need will ensure that the strategy supports measures to promote full and effective equality for minority ethnic groups in accordance with Article 4(2) FCNM.**

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<sup>33</sup> [Application for Judicial Review Committee on the Administration of Justice](#) 2015 NIQB 59

<sup>34</sup> As above.

## **Austerity, the Stormont House and Fresh Start Agreements**

37. Throughout the reporting period the Northern Ireland Executive, whose competencies include the running of health, education, housing, infrastructure, justice and social security, has seen a significant reduction in the budget it receives from the UK government. £3.7GDP billion [4.7 billion EUR] was cut from the budget from 2008-15.<sup>35</sup> There was however significant resistance to further austerity measures, particularly in the field of social security, in this time and further cuts are now planned. The immediate and long term impacts of austerity on inequality in Northern Ireland have specific implications in a divided society emerging from a conflict in which inequality had been a significant issue.
38. During the reporting period some of the UK government's welfare cuts were implemented in Northern Ireland but equivalent legislation to the Welfare Reform Act 2012 in Great Britain was blocked by nationalist parties and the Green party in the Northern Ireland Assembly. For not passing these cuts the UK Government imposed economic sanctions (which it refers to as fines or penalties) on the Northern Ireland Executive to the equivalent of around \$3 Million EUR a week. This along with other austerity cuts to the Executive's budget brought the power sharing institutions established by the 1998 Belfast / Good Friday Agreement to the repeated brink of collapse throughout the current mandate.
39. Crisis negotiations in 2014 between the UK government and parties in the NI Executive on this and other issues led to the 'Stormont House Agreement' (SHA) published by the UK government in December 2014. The 'finance and welfare' section of the SHA, essentially provides significant changes to the economic and public sector model in Northern Ireland similar to those often found in structural adjustment programmes, with a reduction in the size of the public sector and spending, welfare cuts and cuts to taxes paid by corporations. Specifically the SHA provides for:
- Agreement for a 'balanced budget' for 2015-16, which requires the implementation of cuts sought to public spending;
  - A comprehensive programme of Public Sector Reform and Restructuring, including a significant reduction in the size of the public sector with a 'Voluntary Exit Scheme' for up to 20,000 public sector jobs to be funded by borrowing;
  - An OECD independent strategic review of public sector reform;

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<sup>35</sup> Fresh Start Agreement, Section B, paragraph 1.1.

- Implementation of cuts to the welfare state introduced in Great Britain under the Welfare Reform Act 2012, but with a mitigation fund for existing claimants;
  - Devolution of powers over Corporation Tax (profits tax on companies) with a view to lowering the rate in NI to 12.5%;
  - Consideration of privatisation of public assets (termed in the Agreement as departments considering how “best to realise the value of their capital assets” to realise income and savings);
40. The implementation of the SHA was subsequently however quickly derailed by questions over the scale of mitigations for social security cuts. Subsequently there was also the announcement of further cuts beyond the terms of the SHA by the new Conservative (UK) Government when they took office in May 2015. In November 2015 a further agreement, A ‘Fresh Start’ Stormont Agreement and Implementation Plan, was published with the aim of implementing the financial provisions of the SHA, with more detailed provisions for transitional welfare cuts mitigations.
41. CAJ has raised concerns as regards the impacts of such austerity measures. The downsizing of the public sector may impact negatively on minorities in the workforce, and on minority service users (who are more likely to face disadvantage, and hence rely on public services). The reforms are premised on further private sector investment in Northern Ireland. If this happens there is the risk that investment will be uneven and hence entrench and exacerbate inequalities faced by minorities. Social Security cuts by definition will disproportionately affect those in disadvantage, including minorities. Independent research commissioned by the Equality Coalition (funded by the Irish government’s anti-sectarianism fund and hence with a focus on the two largest ethnic groups) concluded that: “...*the economic model made explicit in the financial annex of the SHA is likely to deepen and widen inequality – both generally (between richer and poorer people) and in terms of the differences between Protestants and Catholics.*”<sup>36</sup>
42. As alluded to earlier in this submission the implementation legislation for the 1998 Belfast/Good Friday Agreement put in place a key provision to oblige public authorities to conduct Equality Impact Assessments on policy changes. Equality Impact Assessments involve examination of all available data to determine whether there will be adverse impacts across nine discrimination grounds. Where there are adverse impacts public authorities are then obliged by the law to consider alternative policies and mitigating measures.<sup>37</sup>

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<sup>36</sup> Professor Christine Bell and Dr Robbie McVeigh *A Fresh Start for Equality? The Equality Impacts of the Stormont House Agreement on the Two Main Communities*, 2016 (paragraph 10 executive summary).

<sup>37</sup> Northern Ireland Act 1998, section 75 and schedule 9

43. However, a pattern has emerged whereby significant austerity measures have not been subjected to adequate equalities scrutiny. This was most notable in the equalities assessment of the 'Welfare Reform Bill' social security cuts where the public sector equality duty was sidelined, with the purpose or effect of disguising the equality impacts of the welfare reform agenda. The government ministry responsible for social security policy in Northern Ireland (the Department for Social Development) in its equality impact assessment on the bill missed out four of the nine discrimination categories (namely religious belief, racial group, political opinion and sexual orientation). This therefore includes all of the main indicators of ethnicity.
44. The retrogressive nature of welfare cuts on minorities introduced by the 'reform' agenda across the UK will no doubt be raised in evidence to the Advisory Committee from a range of groups. We wish to draw attention to obvious yet underplayed additional impacts such measures have in Northern Ireland. It is evident from history that within the context of a post-conflict divided society real or perceived inequalities and disadvantage risk fuelling conflict. The areas hardest hit by conflict and deprivation will be those hardest hit by the implementation of the UK government's welfare reforms.<sup>38</sup>

**The Advisory Committee may wish to ask:**

- **What steps will the state party take to ensure that austerity measures in NI, including those under the Stormont House and Fresh Start Agreements, do not have a regressive effect on rights protected under FCNM Article 4;**
- **Why a full Equality Impact Assessment covering indicators of ethnicity was not conducted on the welfare reform bill in Northern Ireland;**
- **Urge public authorities to ensure Equality Impact Assessments are properly conducted in relation to austerity measures;**

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<sup>38</sup> Christina Beatty and Steve Fothergill [The Impact of Welfare Reform on Northern Ireland](#) Centre for Regional Economic and Social Research and Sheffield Hallam University, page 5. This highlights that, for example, the new Derry-Strabane local government district will be the hardest hit by welfare reform and generally the most deprived areas across Northern Ireland will face the largest losses.

## Policing and Criminal Justice

### Incitement to hatred legislation in Northern Ireland

45. Northern Ireland has suffered further orchestrated racist attacks throughout the reporting period.
46. Article 6(2) FCNM provides that state parties will “*undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.*”
47. The UK is also party to similar provisions in the UN human rights system under Article 20 of the International Covenant on Civil and Political Rights (ICCPR), which provides that ‘*Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law;*’ and Article 4a of the International Convention for the Elimination of all Forms of Racial Discrimination (ICERD) which provides that the state shall outlaw ‘*dissemination based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin*’. The UK lodged an ‘interpretive declaration’ in relation to this ICERD provision stating in essence it will only implement the prohibition insofar it is compatible with freedom of expression. In our view this reservation is redundant as it has been clarified that the provision is to be in any case interpreted compatibly with free expression. There has also been considerable work in recent years to clarify the ‘threshold’ question regarding the factors and contexts of where protected freedom of expression ends and where unprotected racist expression begins. Most notably this includes the UN Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred, which provides for a six-part threshold test for defining incitement to hatred in relation to application of Article 20 of the ICCPR.<sup>39</sup>
48. In relation to domestic legislation Part III of the Public Order (Northern Ireland) Order 1987 prohibits incitement to hatred. This covers offences of ‘stirring up hatred’ or ‘arousing fear’ against a group of persons on grounds of religious belief, sexual orientation, disability, colour, race, nationality (including citizenship) or ethnic

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<sup>39</sup> *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence* see also Article XiX Policy Brief Prohibiting incitement to discrimination hostility or violence, December 2012.

or national origins.<sup>40</sup> 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 one of the listed grounds), or which, having regard to all the circumstances, are likely to have that effect.

49. However, statistical data released by the police under Freedom of Information indicates there have only been a small number of arrests and charges under the legislation since its inception and it is believed that there has only been one conviction under this legislation since its enactment. This conviction came in late 2015 and related to racist messages placed on a loyalist bonfire.<sup>41</sup> This was particularly controversial as the bonfire in question had received public funding from the municipal council, and the Council in question has reportedly not subsequently adopted proposed measures to preclude funding for bonfires which include racist displays.<sup>42</sup>
50. In 2014 the office of the Attorney General for Northern Ireland issued statutory human rights guidance to NI prosecutors.<sup>43</sup> This guidance, which is legally binding, references the UN Rabat Plan of Action and, at paragraph 31, includes the six-stage threshold test for incitement to hatred within the guidance. This provides therefore a framework the prosecution service should have regard to when considering charges under Part III of the 1987 Order. Despite this development the NI legislation continues to set a relatively high threshold for charges for advocacy of hatred and, despite the ongoing manifestations of racist violence and expression in the jurisdiction, is unlikely to prove effective. In September 2015 the Chief Constable of the Police Service of Northern Ireland (PSNI) told the Northern Ireland Policing Board (the oversight body for policing) that the PSNI wished for a review of the legislation with a view to the legal regime being simplified. The Chief Constable urged the 'legislative authority in Northern Ireland to consider this matter urgently.'<sup>44</sup>

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<sup>40</sup> The categories of sexual orientation and disability having been added in 2004.

<sup>41</sup> See <http://www.bbc.co.uk/news/uk-northern-ireland-35038751>

<sup>42</sup> 'Unionists block sanctions over racist and sectarian displays on bonfires' Irish News 2 March 2016  
<http://www.irishnews.com/news/2016/03/02/news/unionists-block-sanctions-over-racist-and-sectarian-displays-on-bonfires-435864/>

<sup>43</sup> Guidance by the Attorney General for Northern Ireland pursuant to Section 8 of the Justice (Northern Ireland) Act 2004 No. 4 HUMAN RIGHTS GUIDANCE FOR THE PUBLIC PROSECUTION SERVICE Laid before the Northern Ireland Assembly on 21 March 2014.

<sup>44</sup> Northern Ireland Policing Board, Questions to the Chief Constable, 3 September 2015. 'The placing on bonfires of election posters, effigies and other images of public figures (Pat Sheehan)' [http://www.nipolicingboard.org.uk/written\\_response\\_to\\_questions\\_for\\_3\\_september\\_2015\\_meeting\\_3.pdf](http://www.nipolicingboard.org.uk/written_response_to_questions_for_3_september_2015_meeting_3.pdf)

**Further to Article 6(2) the Advisory Committee may wish to ask:**

- **the NI Department of Justice to conduct a review of the Part III of the Public Order (Northern Ireland) Order 1987, with a view to providing a stronger legislative base to tackle advocacy of hatred;**
- **That Northern Ireland Councils undertake appropriate measures to ensure they do not fund activities which include manifestations of hostility to persons as a result of their ethnic, cultural, linguistic or religious identity;**

**Northern Ireland Stop and Search powers and ethnic monitoring (Article 4(1) FCNM)**

51. Article 4(1) of the Framework Convention guarantees equality before the law and equal protection before the law for national minorities. To this end CAJ would like to draw attention to Northern Ireland being the only part of the UK which does not have mandatory ethnic monitoring of stop and search powers as part of its legal framework. The absence of this key tool for combating discrimination is particularly problematic in a context where by specific ‘emergency’ type stop and question/search powers still exist in Northern Ireland (under the Justice and Security (Northern Ireland) Act 2007- JSA) that do not require the usual threshold of ‘individual reasonable suspicion’.<sup>45</sup>
52. Unlike other stop and search powers the JSA powers were operated without a regulatory ‘Code of Practice’ for five years. Following CAJ research on the issue a Code of Practice was consulted upon and ultimately adopted through an urgent procedure in May 2013 after the courts found that exercising the powers in its absence was not compatible with the ECHR.<sup>46</sup> Uniquely the Code of Practice for the exercise of powers under the JSA 2007 in Northern Ireland does not have binding ethnic monitoring requirements which oblige record keeping of self identified or perceived ethnic background. This contrasts with every Code of Practice in Great Britain which contains such binding requirements.<sup>47</sup>

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<sup>45</sup> Under the Justice and Security (Northern Ireland) Act 2007, which is drafted explicitly as a power to search for munitions and transmitters, and to question mainly over identity and movements. Whilst following the case of *Gillan & Quinton v UK*, the power was amended by the Protection of Freedoms Act 2012 to introduce an additional requirement that a senior police officer issue a general authorisation, which is both time and geographically bound, to allow their use, it has subsequently emerged in the courts that there had in fact been continuous authorisations in place for the whole of Northern Ireland since the requirement was introduced (In the matter of an application by Stephen Ramsey for judicial review (Summary of Judgment), 2014 NIQB 59).

<sup>46</sup> In the matter of an application by Fox, McNulty and Canning for judicial review [2013] NICA 19,

<sup>47</sup> The TACT Code of Practice in Great Britain and the PACE legislation in Great Britain both contain recording provisions which ensure “[A] note of the self defined ethnicity, and, if different, the ethnicity as perceived by

This is despite the context of such monitoring being commonplace in other spheres in Northern Ireland such as employment and service delivery.

53. The following recommendation made by the Northern Ireland Policing Board in a thematic review of stop and search in 2013 remains unimplemented:

[The Police Service for Northern Ireland] should as soon as reasonably practicable but in any event within 3 months ... consider how to include within its recording form the community background of all persons stopped and searched under sections 43, 43A or 47A of the Terrorism Act 2000 and all persons stopped and searched or questioned under section 21 and 24 of the Justice and Security (Northern Ireland) Act 2007.<sup>48</sup>

54. In March 2015 a question to the PSNI Chief Constable from the Northern Ireland Policing Board confirmed that there was no legislation preventing the PSNI from monitoring community background.<sup>49</sup> Despite a number of commitments to take the recommendation forward, the codes of practice have still not been amended.

**The Advisory Committee may wish to ask when ethnic monitoring will be introduced to all stop and search powers in Northern Ireland.**

## **Irish-English Bilingual signage (Article 11(3) FCNM)**

### **Bilingual signage and local authorities**

55. There continue to be significant limitations and obstacles regarding the provision of official signage inclusive of the Irish language in Northern Ireland which impact on the Irish speaking minority in the jurisdiction.

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the officer making the search, of the person searched or the person in charge of the vehicle searched (as the case may be)...” see ‘Terrorism Act 2000, Code of Practice (England, Wales and Scotland) for the Authorisation and Exercise of Stop and Search Powers relating to Section 47A of Schedule 6B to the Terrorism Act 2000’ Home Office, 2011, paragraph 5.4.1; ‘Police and Criminal Evidence Act 1984 Code A Code of Practice for Exercise by Police Officers of Statutory Powers of Stop and Search’ Home Office 2010, paragraph 4.3(a).

<sup>48</sup> Report of the Northern Ireland Policing Board: Human Rights Thematic Review on the use of police powers to stop and search and stop and question under the Terrorism Act 2000 and the Justice and Security (NI) Act 2007, 15 October 2013.

<sup>49</sup> Policing Board, Monitoring Stop and Search by Community Background (Cairíona Ruane), Question to Chief Constable, March 2015.

There is at present no provision for bilingual road and general place name signage, and very limited provision for bilingual street signage. This is in a context whereby a high number of place names in the jurisdiction are essentially English transliterations of the original name in Irish.

56. This is despite treaty-based commitments to promote the Irish language, including through the provision of bilingual signage and the use of traditional and correct forms of place names. Article 11 (3) of the Framework Convention provides that:

In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.

57. In relation to Northern Ireland the UK has also registered Irish under Parts II and III of the European Charter for Regional and Minority languages, and also Ulster Scots under part II of the Charter. Under Part III of the Charter there is a particular duty to allow and/or encourage (alongside English if necessary), the traditional and correct forms of place names in Irish (Article 10(2)g). Under Article 7 of Part II of the Charter public authorities are required to base their policies and practice on the basis of objectives and principles which include the need to take resolute action to promote Irish and Ulster Scots in order to safeguard them (see Article 7(1)c). Whilst there are a number of ways in which this requirement can be met the Council of Europe has extolled the use of bilingual signage as a key measure stating:

...Council of Europe reiterates that the use of minority languages in official signage is a promotional measure with a considerable positive effect for the prestige and public awareness of a minority language. This position is supported by the Committee of Ministers of the Council of Europe, which in recent years adopted several recommendations calling on states to use minority languages on public signs.<sup>50</sup>

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<sup>50</sup> 'Council of Europe supports use of minority languages in official signage' PRESS RELEASE <http://www.coe.int/t/dg4/education/minlang/> also citing: CM/RecChl2013(1) concerning the Czech Republic, CM/RecChl2013(3) concerning Serbia, CM/RecChl2013(6) concerning Bosnia and Herzegovina, CM/RecChl2014(1) concerning Ukraine.

58. The Committee of Experts (COMEX) on the Charter has also urged authorities to remove legal and practical obstacles to bilingual signage, including in context where there is hostility to such signage in some local government areas.<sup>51</sup>
59. The stipulation of the Framework Convention for the use of place names in matters such as street signage is that there is ‘sufficient demand’ to justify provision. This is clearly not to be limited in the context of opposition or hostility to minority language provision. Given as legislation in NI should, in so far as is practicable, be interpreted compatibility with these treaty based commitments, councils should ensure that as far as possible their mechanisms for providing bilingual street signs give due consideration to the Framework Convention and Charter. The establishment of demand does not have to be a de facto referendum on signage, where equal weight is given to those for and against without any consideration of international obligations and the wishes of the linguistic minority in question.
60. COMEX has also raised concern about approaches relating to ‘quotas’ for the number of speakers (or communities with which the language is otherwise identified). Commenting on a proposal regarding a threshold whereby 50% of a population would have to belong to a national minority, put forward against the background of ‘controversies’ relating to signage, COMEX indicated that such a threshold would be incompatible with the Charter – drawing attention to a threshold of 20% which, when taken alone, in other states has been considered to high.<sup>52</sup> In the Czech Republic the Committee of Experts commented on legislation whereby minority language signs could be installed when at least 10% of the local government district identified themselves to be members of the minority in question.<sup>53</sup>
61. CAJ is aware of arguments that the rights of the Irish speaking minority to provision for the Irish language, such as through bilingual signage, is ‘politicised.’ Essentially in the local context this means provision is politically contested, being supported by most (but not all) nationalists and being opposed by a significant number (but not all and diminishing) of unionist representatives. CAJ can only observe that this is the same for other minority rights issues, for example the rights of persons of minority sexual orientation. In neither case should this serve as a justification to limit the application of established provisions and principles for minority rights, such as those enshrined in the Framework Convention for linguistic minorities.

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<sup>51</sup> Application of the Charter in the Czech Republic 2nd monitoring cycle, ECRML (2013) 2, paragraphs 185-7.

<sup>52</sup> Application of the Charter in Croatia, 2014-15 report, paragraph 25.

<sup>53</sup> See Application of the Charter in the Czech Republic 2nd monitoring cycle, ECRML (2013) 2, paragraph 183.

CAJ concurs with, and has found extremely helpful, the previous observations of the Advisory Committee in relation to bilingual signage in Northern Ireland:

The Advisory Committee has been informed that, in some instances, the need for keeping good relations has been used as justification for not implementing provisions in favour of persons belonging to minorities, such as the erection of bilingual signs... Additionally, it finds it problematic that the official policy is to limit the erection of such signs to certain areas where the issue would not raise controversies. The Advisory Committee is concerned that this approach is not in line with the spirit of the Framework Convention ... the aim of which is to value the use of minority languages... with a view to promoting more tolerance and intercultural dialogue in society.<sup>54</sup>

62. In relation to street signage, this power is vested in municipal authorities, of which there are now 11 Councils. The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1995 provides qualified circumstances in which a Council can erect a street sign in Irish (or any other language) alongside a sign in English. This Act repealed the earlier Public Health and Local Government (Miscellaneous Provisions) Act (NI) 1949 which in effect banned Irish from being used in street signs. Section 11 of the 1995 Act is now the statutory basis for street signage. It is a permissive power than a compulsory duty for bilingual street signs, although the discretion is narrowed by a provision that the Council must have regard to ‘any views on the matter’ expressed by residents in the street. This provision, whilst assisting in ascertaining demand, does not explicitly reflect other provisions of the Framework Convention and other international standards, such as duties to promote traditional and correct forms of place names, or give weight to the desires of speakers of minority languages. However as alluded to above there is still an onus to interpret legislation, as far as is possible, compatibly with treaty based commitments. The 1995 legislation also still makes it a criminal offence to put up an unofficial Irish language sign.
63. The provision only covers street signs. There was an attempt to extend its scope in 2015 to also provide a regulatory framework for including the names of townlands, many of which would be from the Irish language. The Private Members Bill however fell in the Assembly.<sup>55</sup>

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<sup>54</sup> As above paragraphs 126 and 158, emphasis added.

<sup>55</sup> Local Government (Numbers and Addresses of Buildings in Townlands) Bill, introduced by Phil Flannigan MLA. <http://www.niassembly.gov.uk/assembly-business/legislation/current-non-executive-bill-proposals/local-government-numbers-and-addresses-of-buildings-in-townlands-bill/>

However Councils do have in any case a power to undertake work outside that explicitly provided for in statutory provisions, now formalized into a 'General Power of Competence' in the most recent local government legislation. This gives the new Councils the "power to do anything that individuals generally may do". The only boundaries applied to this power are when other statutory powers restrict the council from taking particular actions.<sup>56</sup> So whilst legislation explicitly provides for, and regulates, street signage, Councils are empowered to erect other types of signage, some Councils have erected other signage such as town name signage on the entry roads to towns.<sup>57</sup> Some of this signage however may now be under threat following the reorganisation of local government.

64. Some local Councils have proposed policies which would heavily restrict provision of street signage under the 1995 legislation. CAJ wrote to one authority, Mid and East Antrim Council in relation to policy which we understand proposed the following application process:

- An application for 'renaming' a street must be accompanied by an initial survey / signed petition of residents in the street indicating a positive interest in 'changing the name' or removing a sign not in English. To add a sign in another language either the Council or occupiers may 'initiate procedures';
- If an application advocates for bilingual signage (or removing same, renumbering, renaming) the elected body of the Council is to be notified by the Chief Executive and the opinions of 'all persons affected by the application' be sought by writing to existing occupiers;
- The Council will write to every person over 18 in the street, or business owners in the case of commercial premises, and seek comment by return within 28 days;
- The Council will also advertise in three local English-medium newspapers and invite non-residents to 'provide comment' on the proposals within 28 days;
- Officers prepare a summary report on both surveys for the Councils' Equality Working Group – but the Group will only be allowed to 'consider' a proposal if the survey demonstrates at least 66.7% (two thirds ) of residents are in favour. The group must then review all comments received from the survey and non-residents before making a decision for which no further criteria are set out;

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<sup>56</sup> Local Government (Northern Ireland Act) 2014, sections 79-80.

<sup>57</sup> The provision of general road signage is within the competence of an NI government department and not local councils.

- This decision will only be implemented if then agreed by the Council’s Policy and Resources Committee, and subsequently ratified by the full Council. If it is ratified the name of the language will be added to the sign;
  - Should Elected Members decline the request residents are then precluded from submitting any other application for bilingual signage for 12 months. There is no process of appeal;
65. CAJ expressed concern that the policy was designed and tailored with the purpose and/or effect of making it as difficult as possible for any streets to have bilingual signage in Irish. The policy, at considerable expense, would place numerous obstacles for those seeking such signage. This includes the requirement for forms to go to all individuals, a very high threshold of 75% for a proposal to be even considered, as well as subsequent additional barriers with no seeming weight given to duties to promote minority languages. CAJ is also aware of at least one Council that automatically counts survey forms which are not returned as being a ‘no’ vote in relation to bilingual signage.

**The Advisory Committee may wish to:**

- **Urge municipal authorities in Northern Ireland to adopt bilingual street signage policies which are compatible with the Framework Convention;**
- **Urge the Northern Ireland Executive to introduce legislation to provide for bilingual road and other place name signage in a manner compatible with Article 11(3);**

**Committee on the Administration of Justice**

**March 2016**