

## **(S456) Submission from the Committee on the Administration of Justice (CAJ) to the Executive Office of the NI Executive on the draft Programme for Government Framework 2016-2021**

**June 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.

### **Background**

Following elections in May 2016 a new NI Executive was formed consisting of the DUP, Sinn Féin and an independent MLA. A draft *Programme for Government Framework Document* (PfG Framework Document) was then published for consultation by the Executive Office (formerly OFMdFM) on the 27 May 2016 until July 2016.

The PfG Framework Document differs from previous Programmes for Government in taking an outcomes and measured indicators focused approach. The PfG Framework Document does not contain actions but states that the next steps among other matters are to:

- Build Action Plans for coming years;
- Finalise and agree a Programme for Government;
- Finalise and agree a ‘refreshed Economic Strategy’; a new ‘investment strategy’ and a ‘Social Strategy’ by the end of 2016.

The new ‘Social Strategy’ is referred to as an anti-poverty/social strategy on the PfG webpage.<sup>1</sup> The document also undertakes to implement previous NI Executive commitments (which would include, for example the Child Poverty, Sexual Orientation and Racial Equality Strategies) and also commits to other matters including:

- The Implementation of the *Fresh Start* Agreement;
- Working to resolve the outstanding issues regarding the legacy of the past;
- Flagship infrastructure projects announced in a previous budget;
- Working through the North-South Ministerial Council and British-Irish Council.

In the sections on outcomes there is also a section on the role of the Executive, setting out in general terms Executive commitments to contribute to each outcome.

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<sup>1</sup> <https://www.northernireland.gov.uk/topics/work-executive/programme-government> [Accessed 7 June 2016]

## Outcomes, Indicators, Measures and Equality

The document lists 14 strategic outcomes of the PfG Framework which are supported by 42 indicators each with their own measures. For example the outcomes include:

- We have more people working in better jobs;
- We have a more equal society;
- We prosper through a strong, competitive, regionally balanced economy;
- We give our children and young people the best start in life;

The Indicators and measures include matters such as:

Indicator	Measure
Reduce Crime	Prevalence rate- number of victims of any crime
Increase healthy life expectancy	Healthy life expectancy at birth
Improve cultural participation	% engaging in arts/cultural activities in past year
Increase reconciliation	% of the population who believe cultural identity is respected by society
Reduce poverty	% of population in a) absolute b) relative poverty (Before Housing Costs)
Reduce educational inequality	Gap between % of school leavers and % of FSME leavers achieving level 2 or more including English & Maths
Increase economic opportunities for our most deprived communities	Employment rate of 16-64 year olds by deprivation quintile

The bulk of the draft PfG Framework Document (pp17-46) then elaborates on which indicators relate to which outcomes. A further chapter then sets out the background to each indicator. CAJ welcomes the fact that a significant number of the indicators and their respective measures correspond with human rights-based indicators and imperatives on economic, social and cultural (ESC) rights, for example, the measures to increase and monitor healthy life expectancy and reduce poverty. CAJ would urge further consideration of human rights based indicators within the framework; for example we draw attention to the recent UN Committee on the Rights of the Child's recommendation that the NI Executive expedite a Child Rights Indicator Framework based on UN standards.<sup>2</sup> We would also urge consideration of the Human Development Index (HDI) and Inequality-adjusted Human Development Index (IHDI).<sup>3</sup>

In relation to equality monitoring there are a number of matters on which we would seek clarification in relation to the draft PfG Framework. First it is not clear whether the

<sup>2</sup> "The Committee recommends that the government of Northern Ireland expedite the finalization of a Child Rights Indicator Framework, covering all areas of the Convention and taking into account the conceptual and methodological framework set out in the Office of the United Nations High Commissioner for Human Rights (OHCHR) publication entitled Human Rights Indicators: A Guide to Measurement and Implementation" UNCRC, Concluding Observations on the UK CRC/C/GBR/CO/5, paragraph 13.

<sup>3</sup> <http://hdr.undp.org/en/content/human-development-index-hdi>, <http://hdr.undp.org/en/faq-page/inequality-adjusted-human-development-index-ihdi#faq-expand-all-link>

monitoring frameworks set out directly on equalities issues (Indicator 12 on Educational Inequality, Indicator 2 on Health Inequality) will produce disaggregated data across equality categories. This includes the nine categories in Section 75 of the Northern Ireland Act 1998, on which the Executive Office has already committed to monitor the impact of its policies through binding commitments in its Equality Scheme.<sup>4</sup> We would urge that this specific commitment to disaggregate the statistics is added to the framework; considerable official data on such matters already exists. Second, we welcome Outcome 3 of the PfG draft Framework for a more equal society, and the aforementioned inequalities indicators map into this. Whilst there are indicators on educational and health inequalities we note there are not direct indicators on other areas of inequality such as housing and employment. Whilst there are other indicators which deal with these areas we would urge that specific inequality indicators are added. In addition there is no specific reference or indicator relating to the rights of minorities within the current framework, and reference to ethnic and linguistic minorities should be added. There are some measures which are yet to be defined –such as the proposed development of “A Respect Index” to measure an increase in respect for each other; we would urge that any such index draws on UN and Council of Europe standards.

The PfG Framework document includes, on its final page, information on the equality impact screening required under the ‘Section 75’ equality duty. There are a number of issues however with this screening exercise. First, the screening exercise seeks to reduce the scope of the policy to which the equality screening duties are applied. The document states the exercise only considered whether there were going to be any adverse impacts through ‘adopting an outcomes based approach.’ This is however only part of the proposed policy – the PfG draft Framework in addition to adopting an outcomes based approach per se, also proposes what that outcomes based approach should be and in addition takes decisions to implement strategic policies – not least the Fresh Start agreement, which itself has numerous potential equalities impacts.<sup>5</sup> The document also sets out outline Executive commitments to each outcome. For example, Outcome 11 is ‘We have high quality public services’ – with Executive contributions including “*Supporting the delivery of services through the most appropriate channel –whether this is in the public, private or community and voluntary sector.*” This appears to provide for the potential further privatisation of public services, which would have significant equality implications.

In summary CAJ urges:

- Further consideration of human rights based indicators within the Framework, and the Human Development Index and Inequality-Adjusted HDI;
- A commitment to disaggregate data on inequalities indicators within the Framework across equality group grounds;

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<sup>4</sup> For example see the paragraphs 4.27 and 4.31 of the Scheme which commit to monitoring ‘any adverse impact on the promotion of equality of opportunity of policies we have adopted’, monitoring to identify positive opportunities to promote equality and the continued equality monitoring following the implementation of policies.

<sup>5</sup> See for example “Bell, Christine and McVeigh, Robbie ‘A Fresh Start for Equality? The Equality Impacts of the Stormont House Agreement on the ‘Two Main Communities’ (Belfast: Equality Coalition, 2016).

- The addition of additional inequalities and minority rights indicators, and development of the ‘respect’ indicator in line with international standards;
- The review and revision of the Equality Screening exercise.

### **Core Actions within the draft Programme for Government Framework**

As noted above the draft PfG Framework contains commitments to a number of specific strategic policies (Fresh Start, refreshed economic strategy etc) and also references the development of a full Programme for Government and action plans by the end of 2016. In this context we would like to set out a number of key strategic policy areas we would urge are explicitly included in the Programme for Government:

#### **S28E Anti-Poverty Strategy based on objective need**

There is an unmet legal duty on the NI Executive to adopt a strategy setting out how it will tackle poverty, social exclusion and patterns of deprivation based on objective need, under S28E of the Northern Ireland Act 1998 (as amended). The previous Executive failed to adopt such a strategy and was subject to successful judicial review proceedings by CAJ in 2015.

It is welcome that the First Minister and deputy First Minister confirmed in response to an Assembly Question in January 2016 that the anti-poverty strategy based on objective need will be included within the Programme for Government.<sup>6</sup> We would therefore urge that the final framework document and the full Programme for Government make explicit reference to the s28E strategy and a timetable for its introduction be set out as soon as possible. A response in the Assembly following the publication of the draft PfG Framework, states that the Department of Communities is committed to taking forward the anti-poverty strategy and which itself will be incorporated into the overarching Social Strategy.<sup>7</sup>

A conference hosted in UNISON by the NI Anti-Poverty Network and the Child Poverty Alliance discussed a set of principles for the anti-poverty strategy, which are included as an appendix to this document. We would urge commitment to these principles in the PfG.

#### **Legal duties for strategies for Irish and Ulster Scots**

In similar terms to the duty to adopt the anti-poverty strategy there are two statutory duties on the Northern Ireland Executive which engage the realisation of the rights of linguistic minorities. The first is the duty to adopt a strategy to *enhance and protect the development of the Irish language*. The second is a duty to adopt a strategy to *enhance and develop Ulster Scots* (language, heritage and culture).

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<sup>6</sup> Hansard (AQO 9379/11-16), 7 January 2016 Claire Hanna MLA to First Minister, Arlene Foster MLA.

<sup>7</sup> Hansard (AQT 26/16-21), 14 June 2016 Sean Lynch MLA to Minister of Communities, Paul Given MLA.

During the previous mandate such strategies were developed, consulted on and published by the then Department of Culture Arts and Leisure (DCAL) but were then subject to veto at the NI Executive. Hence the legal duty to 'adopt' both strategies remains unmet. As well as domestic law these matters engage international obligations.

### **Austerity and inequality actions for the PFG**

CAJ and the Equality Coalition, which we co-convene with UNISON, have been active on issues relating to inequality and austerity. The Coalition has published research on the equalities impacts of the Fresh Start and Stormont House Agreement finance and welfare provisions, undertaken by Prof Christine Bell and Dr Robbie McVeigh. Among the recommendations of this research were that there should be "full proofing of the SHA/Fresh Start financial package in terms of equality." An Equality Impact Assessment (EQIA), they recommended, "should both evidence how the different proposals of the SHA will impact on existing inequalities - positively or negatively - and identify mitigating measures/ alternative proposals in line with statutory guidance where these fail to address any existing inequalities." The researchers noted that such an exercise, which is in any case a requirement of the statutory equality duty, would also serve "for a baseline against which the next programme for government should be developed." A further recommendation was specifically directed at the PFG as follows:

When the parties are preparing the next programme for government in particular, issues relating to the implementation of welfare cuts, full anticipation and mitigation of equality issues, both in terms of the impact on the different groups in Northern Ireland and in terms of the impact on the least well off, should be introduced as an integral part of the programme of government.<sup>8</sup>

CAJ would urge the adaptation of this approach in the Programme for Government.

In October 2015 the Equality Coalition also hosted a major international conference on austerity and inequality. Among the key points agreed by the Coalition following this conference (and directed at the NI Executive) were:

#### **Whilst austerity is London-imposed the Northern Ireland Executive have some powers to make policy choices that can mitigate its impacts**

- The NI Executive should, on the basis of objective need, adopt the strategy to tackle poverty, social exclusion and patterns of deprivation that it is legally required to do;

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<sup>8</sup> Bell, Christine and McVeigh, Robbie 'A Fresh Start for Equality? The Equality Impacts of the Stormont House Agreement on the 'Two Main Communities'(Belfast: Equality Coalition, 2016), recommendations 2 &3.

- The NI Executive should raise revenue through increasing the rates paid on properties owned by the better off;
- The NI Executive should introduce rent controls to both alleviate the cost pressures on low income families and, by reducing Housing Benefit monies paid to property owners, provide an alternative method of reducing social security costs;
- The NI Executive should adopt a childcare strategy that implements comprehensive provision and boosts the economy by allowing parents to stay in work and increasing the economic participation of women.

**Austerity measures, including the Stormont House Agreement package, must be subject to the equality proofing tools of the peace settlement.**

- There is a concerning pattern emerging whereby major policy decisions on social security or public sector cuts are studiously avoiding proper equality proofing. Equality Impact Assessments (EQIAs) require the consideration of alternative policies where proposed policies will negatively impact on equality. There is no exemption for austerity.
- The permanent disappearance of up to 20,000 public sector jobs and the services they provide under the ‘Voluntary Exit Scheme’ is being taken forward without an overarching EQIA. Some public authorities have already taken the view that there will be no equality impacts regardless of who applies and who is selected, even if the VES exacerbates the unemployment differential, unequal pay or leads to the under representation of other equality groups in the workforce;
- As well as the equality duties other tools such as human rights budget analysis should also be used to scrutinise the impact of policies and proposals. At present there is no centralised monitoring of the cuts and their impacts on substantive equality across all categories. All austerity policies including those under the Stormont House Agreement should be properly equality proofed.

**CAJ would urge the above are considered and included within the Programme for Government.**

**Criminal Justice actions for the PfG**

CAJ would like to urge the inclusion of a number criminal justice matters within the PfG. These include commitments to:

- **Reproductive rights:** steps to ensure compliance with international human rights standards including through the decriminalisation of abortion (including through repeal of sections 58 and 59 of the Offences Against the Person Act 1861) and to

permit terminations in the cases of sexual crime and fatal foetal abnormality. The latter is a requirement to bring legislation in line with the ECHR;<sup>9</sup>

- **Incitement to hatred:** review the legislation in relation to incitement to hatred and bring it in line with human rights standards. The current legislation under Part III of the Public Order (Northern Ireland) Order 1997 has to date led to only one conviction. The PSNI Chief Constable has called for the legislation to be re-examined. Change is also required to fully comply with the provisions of the UN International Convention on the Elimination of all forms of Racial Discrimination (ICERD).
- **Prison Reform:** the full implementation of the 2011 Independent Review of Prisons in Northern Ireland (the Owers Review) and inspectorate reports, and to create a purpose-built women’s prison for those women for whom alternatives to custody are not suitable.
- **Legacy Investigations:** commitments in the PfG that parties to the Executive will not seek to obstruct the implementation of independent and impartial investigations into past human rights violations in compliance with Article 2 ECHR. In particular the PfG should commit to:
  - funding the Police Ombudsman’s business cases for legacy investigations;
  - supporting the Lord Chief Justice Legacy Inquests Unit and funding for it;
  - the full implementation of the Stormont House Agreement legacy mechanisms in a human rights compliant manner;

### Equality law actions for the PfG

CAJ would urge both the inclusion of a commitment in the PfG to non-retrogression in the current levels of protection under anti-discrimination law along with commitments to legislate to strengthen protections and remove gaps in the current framework.

We would urge commitment to single equality legislation, itself consistent with the Human Rights Commissions recommended Bill of Rights, covering additional grounds set out within and upwardly harmonising and strengthening existing protections. This would include the

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<sup>9</sup> In 2015 the Northern Ireland Human Rights Commission took a judicial review which led to criminal justice law in Northern Ireland being declared incompatible with the European Convention on Human Rights (ECHR) for not providing for terminations in the cases of fatal abnormality and sexual crime. The most recent UN Committee to consider abortion in NI has urged that the authorities “*Decriminalize abortion in Northern Ireland in all circumstances and review its legislation with a view to ensuring girls’ access to safe abortion and post-abortion care services*”(UN Committee on the Rights of the Child, Concluding Observations on the UK CRC/C/GBR/CO/5). The UN Committee on Economic, Social and Cultural Rights General Comment No 22 (2016) on the right to reproductive health states “The obligation to *respect* requires States to refrain from directly or indirectly interfering with individuals’ exercise of the right to sexual and reproductive health. States must not limit or deny anyone access to sexual and reproductive health, including through laws criminalizing sexual and reproductive health services and information....States must reform laws that impede the exercise of the right to sexual and reproductive health. Examples include laws criminalizing abortion...”

filling of gaps such as the current situation with discrimination in goods, facilities and services for all age groups.

We would also specifically seek a commitment to removing the provision of Article 2(4) of the Fair Employment and Treatment Order (FETO) 1998. This acts as a barrier to reintegration of persons with conflict related convictions. Its amendment or repeal have been recommended by the *Fresh Start* Panel on paramilitary disbandment and is likely to be recommended in the forthcoming review panel on conflict-related convictions.<sup>10</sup>

We would also urge the inclusion of legislation on:

- **Love Equality:** ending of the prohibition on same-sex marriage in Northern Ireland, which remains the only jurisdiction in on ‘these islands’ not to have legislated for marriage equality;
- **Defining Sectarianism:** a definition of sectarianism consistent with international standards on other forms of racism is included in legislation;<sup>11</sup>
- **Defining Good Relations:** Northern Ireland is the only UK jurisdiction not to define ‘good relations’ on the face of its legislation, which facilitates lay and regressive interpretations of the concept. We urge the adoption of a formulation on the face of the legislation based on the formulation in legislation across England, Scotland and Wales.<sup>12</sup>

**Committee on the Administration of Justice**  
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<sup>10</sup> ‘The *Fresh Start* Panel Report on the Disbandment of Paramilitary Groups in Northern Ireland’ May 2016 Lord Alderdice John McBurney Prof Monica McWilliams; which alludes to the forthcoming ‘Report of the Review Panel on the Employers’ Guidance on Recruiting People with Conflict Related Convictions.’

<sup>11</sup> See McVeigh, Robbie ‘Sectarianism in Northern Ireland: Towards a Definition in Law’ (Equality Coalition, April 2014).

<sup>12</sup> See McVeigh, Robbie ‘Good Relations in Northern Ireland: Towards a Definition in Law’ (Equality Coalition, October 2014), and also recommendations of Equality Commission in ‘Equality Commission Guidance: Advice on Good Relations in Local Councils’, September 2015.

## **Appendix 1: Draft Key Principles for the Anti-Poverty Strategy**

The following principles relate to effective implementation by the NI Executive of the strategy to tackle poverty, social exclusion and patterns of deprivation based on objective need, required by S28E of the Northern Ireland Act 1998 (as amended).

In 2015 the High Court found the NI Executive was acting unlawfully for not having adopted such a strategy following a Judicial Review brought by human rights NGO CAJ with support from the PILS (Public Interest Litigation Support) Project.<sup>i</sup>

These principles were first drafted as the result of a civil society roundtable, of academics and practitioners, hosted by CAJ in February 2016 and were then further refined following a conference in April 2016 organised jointly by the Northern Ireland Anti-Poverty Network and the Child Poverty Alliance. The principles urge that the anti-poverty strategy be informed by the following key principles:

### **1: Definitions of Poverty and Objective Need**

Similar to our neighbouring jurisdictions<sup>ii</sup> the strategy should include a proper definition of poverty, consistent with international standards on socio-economic rights, which reflects material deprivation and an income that falls below an adequate standard of living;<sup>iii</sup>

The anti-poverty strategy should equally ensure proper definitions of objective need which 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.

### **2: Overarching, targeted outcomes, monitoring and remedies**

The anti-poverty strategy should be overarching covering and interconnecting Executive policy rather than being limited to a list of existing or proposed initiatives, including the child poverty strategy. As such it should also contain measurable targeted outcomes to reduce levels of poverty overall and among specific groups. This includes measures to meet targets set for the reduction of child poverty. The monitoring framework should ensure disaggregation across equality categories including gender and ethnic groups (including community background). The strategy should contain a binding-mechanism for remedies when Department do not make targets.

### **4: Countering austerity**

The anti-poverty strategy should recognise the context of, and seek to challenge and minimise the impact of the budget cuts on the NI Block Grant in relation to poverty, including gender-specific poverty. This includes the examination of progressive revenue raising measures (including rates for the better off) rather than giving primacy to further regressive cuts.

## **5: Rights-based approach**

The anti-poverty strategy reflects state responsibility rather than charitable benevolence and should follow a 'rights-based' approach, and hence further the realisation of human rights as laid down in international standards.

## **6: Policy Appraisal**

The anti-poverty strategy should incorporate mechanisms to ensure that all new and revised policies are consistent with the aims of the strategy to tackle poverty on the basis of objective need. Such a process is already implicit within, and could be accommodated within, the existing equality impact assessment process.

## **7: Childcare**

The strategy should incorporate a childcare strategy that implements comprehensive provision and boosts the economy by allowing parents to stay in work and increasing the economic participation of women.

## **8: Macro impact measures**

A strategy should not be limited to project-type measures, which whilst important interventions in themselves will be more limited than macro measures. The strategy needs to be geared to reducing the outgoings and/or increasing the incomes of persons subjected to poverty. Important elements would include matters such as the reintroduction of rent controls, social clauses in procurement, the tailoring of investment and economic strategies within the framework of the strategy, strengthening employment rights and their enforcement to tackle poorly paid work.

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<sup>i</sup> In the matter of the application by CAJ and Brian Gormally for Judicial Review, [2015] NIQB 59.

<sup>ii</sup> "People are living in poverty if their income and resources (material, cultural and social) are so inadequate as to preclude them from having a standard of living which is regarded as acceptable by Irish society generally. As a result of inadequate income and resources people may be excluded and marginalised from participating in 20 activities which are considered the norm for other people in society." R of Ireland: *National Action Plan for Social Inclusion 2007-2016*.

"By poverty, we mean a long-term state of not having sufficient resources to afford food, reasonable living conditions or amenities or to participate in activities (such as access to attractive neighbourhoods and open spaces) which are taken for granted by others in their society." *Child Poverty Strategy for Wales 2015*.

<sup>iii</sup> For example: Poverty as social exclusion: "Individuals, families and groups in the population can be said to be in poverty when they lack the resources to obtain the types of diet, participate in the activities, and have the living conditions and amenities which are customary, or at least widely encouraged or approved, in the societies to which they belong. Their resources are so seriously below those commanded by the average individual or family that they are, in effect, excluded from ordinary patterns, customs and activities."

Peter Townsend, 1979; 'Consensual' definition: People are living in poverty if their lack of resources forces them to live below a publicly agreed minimum standard. Jo Mack and Stewart Lansley, 1985; Poverty is a relative concept. 'Poor' people are those who are considerably worse off than the majority of the population - a level of deprivation heavily out of line with the general living standards enjoyed by the majority of the population in one of the most affluent countries in the world. Joseph Rowntree Foundation; Rights-based approach Poverty is an income level below which people are unable to attain their economic and social rights. David Woodward and Saamah Abdallah (for New Economics Foundation)