

CAJ's submission to the  
United Nations Committee on the  
Elimination of Racial Discrimination  
on the UK's 18<sup>th</sup> to 20<sup>th</sup> Periodic Reports  
under the International Convention on the  
Elimination of All Forms of Racial  
Discrimination

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## 1. Executive Summary and Key Recommendations

The Committee on the Administration of Justice ('CAJ') has limited its submission to those aspects of the application of the Convention on the Elimination of All Forms of Racial Discrimination ('CERD') that cause us concern and may not be covered by other groups.

In order to help eliminate racial discrimination and implement fully the provisions of CERD in Northern Ireland, CAJ encourages the Committee to urge the following:

- The Northern Ireland Executive to provide further information to the Committee on the legislative, judicial, administrative or other measures taken in Northern Ireland to give effect to the provisions of CERD.
- The UK government and Northern Ireland Assembly to advance the Bill of Rights for Northern Ireland.
- The UK to reflect in its State Report, and elsewhere, its commitment to the freedom of the people in Northern Ireland to identify themselves as British, Irish or both.
- The Northern Ireland Assembly to introduce a Single Equality Bill in Northern Ireland.
- Designated public authorities in Northern Ireland to ensure the robust application of s75 to help eliminate racial discrimination and promote equality of opportunity.
- The Northern Ireland Executive to address existing inequalities in any integration strategy.
- The UK Parliament to repeal Administration of Justice (Language) Act (Ireland) 1737 and the Northern Ireland Assembly to introduce an Irish Language Act.
- The Northern Ireland Prison Service to introduce diversity training and monitoring, as a step towards ensuring the full implementation of CERD.
- The Office of the Police Ombudsman for Northern Ireland to undertake more independent, effective, efficient and transparent investigations.
- The Northern Ireland Assembly and Police Service for Northern Ireland to monitor the application of counter-terrorism legislation in Northern Ireland, to help ensure that it does not have a discriminatory effect on ethnic and religious minorities.
- The UK Parliament to introduce sufficient safeguards to ss21 & 24 Justice and Security (NI) Act 2007, to ensure they cannot be used in a discriminatory manner, and for the Secretary of State to suspend them until such safeguards have been introduced.
- The Northern Ireland Executive, and in particular the Department of Justice, to address the criminal justice agencies' limited understanding, reporting, detection, recordal, prosecution and conviction rates of hate crime.
- The Northern Ireland Executive to address the under-representation of ethnic minorities and Catholics in the Northern Ireland civil service, including the police and prisons.
- The Northern Ireland Executive to address the economic inequalities suffered by the Catholic community in Northern Ireland.
- The Northern Ireland Executive to introduce non-Christian religious education within the school curriculum in Northern Ireland.
- The UK to make the optional declaration under Article 14 CERD and provide sufficient information to the public to facilitate the use of the individual complaints mechanism.

## 2. Introduction

The Committee on the Administration of Justice ('CAJ') is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and 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.

We welcome the opportunity to comment on the UK's 18<sup>th</sup> to 20<sup>th</sup> Periodic Reports ('the State Report') to the United Nations Committee on the Elimination of Racial Discrimination ('the Committee') on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination ('CERD'). We also look forward to meeting with the Country Rapporteur and Committee members, and attending the Committee's 79<sup>th</sup> session in relation to the UK, in August 2011.

Although we recognise that the government may have made some progress in relation to the elimination of racial discrimination in Northern Ireland, this submission will only address those issues that still cause us concern. CAJ is a general human rights organisation, with a broad interest in several issues covered by CERD. We are aware that several other Northern Irish non-governmental organisations ('NGO') will be submitting comments on the specific application of CERD to various groupings. As such, this submission is focused on areas that may not be addressed by other NGOs, in order to cover any gaps that may arise.

### 2.1 Information in State Report

Northern Ireland has a devolved administration within the UK, which operates under the Northern Ireland Assembly (legislative powers) and Northern Ireland Executive (executive powers). Although the UK has devolved 'observing and implementing international obligations' to Northern Ireland,<sup>1</sup> the monitoring of and reporting on international obligations remains the responsibility of the UK government.<sup>2</sup> As such, CAJ notes, with disappointment, the paucity of information on Northern Ireland provided in the State Report.

For example, the State Report contains no information on the Durban Declaration and Programme for Action in relation to Northern Ireland. The Committee stated, in its concluding observations on the UK's 17<sup>th</sup> Periodic Report ('the Concluding Observations') that the UK should 'include in its next periodic report updated information on the action plan that it is in the process of drafting in order to implement the Durban Declaration and Programme of Action at national level'.<sup>3</sup> In the State Report, the UK government claims that the *Improving Opportunity, Strengthening Society* policy 'covers all the key areas of the Durban Programme of Action'.<sup>4</sup> However, that policy does not apply in Northern Ireland.

We believe that this shows a certain lack of commitment to CERD by the Office of the First Minister and deputy First Minister ('OFMdfM'), which leads the Northern Ireland Executive. However, further to Article 9 CERD, the ultimate obligation to submit a state report falls on the state party, which is the UK, not our local Executive. The UK has previously provided scant information on Northern Ireland in treaty reporting exercises. In 2009, the United Nations Committee on Economic, Social and Cultural Rights' ('UNCESCR') concluding observations on its last round of reporting on the UK commented on the 'limited availability of information'<sup>5</sup>

<sup>1</sup> Schedule 2 para 3(c) Northern Ireland Act 1998, found at <http://www.legislation.gov.uk/ukpga/1998/47/schedule/2/paragraph/3>.

<sup>2</sup> As not specifically excluded from the excepted list at Schedule 2 para 3(c) Northern Ireland Act 1998, *supra*.

<sup>3</sup> Para 29, Concluding Observations of the Committee on the UK's 17<sup>th</sup> Periodic report, 63<sup>rd</sup> session, 10 December 2003 ('the Concluding Observations').

<sup>4</sup> Para 21, UK's 18<sup>th</sup> to 20<sup>th</sup> Periodic Reports to the Committee ('the State Report').

<sup>5</sup> Concluding observations of the Committee on Economic, Social and Cultural

and reminded the UK 'that it is that State party which is responsible for the implementation of the Covenant in all its territories.'<sup>6</sup>

We are also disappointed that so much of the State Report is out of date. Although the State Report claims to encompass the UK's 18<sup>th</sup> to 20<sup>th</sup> periodic reports, it has not changed in substance from its 18<sup>th</sup> to 19<sup>th</sup> period reports, published on 9 March 2010. As a result, many developments in the application of CERD in the UK have not been included. For example, the State Report states that the 'Northern Ireland Office has overall policy responsibility for upholding law and order in Northern Ireland.'<sup>7</sup> However, most responsibilities for justice and policing were devolved to the Northern Ireland Assembly on 12 April 2010,<sup>8</sup> over one year ago, and over four months before the State Report was published.

We encourage the Committee to urge the UK government, and the Northern Ireland Executive, to provide further information to the Committee on the legislative, judicial, administrative or other measures taken in Northern Ireland to give effect to the provisions of CERD.

## **2.2 CERD in Domestic Legal Order – Bill of Rights for Northern Ireland**

We note that the Committee has recommended that the UK 'review its legislation in order to give full effect to the provisions of the Convention (CERD) in its domestic legal order'.<sup>9</sup> We believe that, within our jurisdiction, this would be best achieved through a Bill of Rights for Northern Ireland.

CAJ has been an advocate of a Bill of Rights for Northern Ireland since its inception. Furthermore, the Good Friday / Belfast Agreement, the 1998 peace agreement following the conflict in Northern Ireland, is an international treaty which refers to a Bill of Rights 'to reflect the particular circumstances of Northern Ireland'.<sup>10</sup> Given that a Bill of Rights for Northern Ireland has been an obligation for over 12 years, we encourage the Committee to urge the UK government and Northern Ireland Assembly to advance the Bill of Rights for Northern Ireland, as is required by the Good Friday / Belfast Agreement.

CAJ believes that a Bill of Rights for Northern Ireland would help to give full effect to all provisions included in CERD, and ensure they become part of our domestic legal order. A Bill of Rights would ensure that whoever rules this disputed ground cannot rule without respecting the rights of everyone who lives here, including those ethnic and religious minorities who do not identify primarily as part of the two main communities.

A central tenet of the Good Friday / Belfast Agreement was to 'recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose'.<sup>11</sup> This approach has been reinforced through the Bill of Rights debate in Northern Ireland and was one of the few substantive rights that the UK government chose to support in its consultation<sup>12</sup> in response to NIHRC advice on a Bill of Rights in Northern Ireland.<sup>13</sup>

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Rights: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories, 12 June 2009, at para 12, found at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/429/21/PDF/G0942921.pdf?OpenElement>.

<sup>6</sup> Ibid.

<sup>7</sup> Para 137, State Report.

<sup>8</sup> See Department of Justice Act (Northern Ireland) 2010, found at [http://www.legislation.gov.uk/nia/2010/3/pdfs/nia\\_20100003\\_en.pdf](http://www.legislation.gov.uk/nia/2010/3/pdfs/nia_20100003_en.pdf).

<sup>9</sup> Para 11, Concluding Observations.

<sup>10</sup> Good Friday / Belfast Agreement, 1998, at para 4 of Rights, Safeguards and Equality of Opportunity, found at <http://www.niassembly.gov.uk/io/agreement.htm#6>.

<sup>11</sup> Good Friday / Belfast Agreement 1998, at para 1(vi), found at <http://www.nio.gov.uk/agreement.pdf>.

<sup>12</sup> Consultation Paper: A Bill of Rights for Northern Ireland: Next Steps, November 2009.

<sup>13</sup> NIHRC, A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland, 10 December 2008, found at

However, the State Report has not recognised the important self-designation of a considerable minority community in Northern Ireland as 'Irish'. This absence is felt even more starkly, given the government's stated commitment to building a 'fundamentally inclusive and cohesive society by creating a sense of inclusion and shared *British* identity'<sup>14</sup> (our emphasis), thus ignoring the particular circumstances of Northern Ireland.

We encourage the Committee to urge the UK to reflect fully in its State Report, and elsewhere, its commitment to the freedom of the people in Northern Ireland to identify themselves as British, Irish or both.

### **3. Articles 1 & 2 - Prohibition of Discrimination**

#### **3.1 (Single) Equality Act**

The State Report makes lengthy reference to the Equality Bill, which has now become the Equality Act 2010. We would like to underline that the Equality Act 2010 does not apply to Northern Ireland. We are concerned that Northern Ireland still has a complex, piecemeal and inconsistent array of anti-discrimination and equality legislation, which could impede access to justice. There are over 80 pieces of equality legislation in Northern Ireland and over 10 relating to race. Within the race relations legislation in Northern Ireland, different levels of protection are available by reference to colour and nationality, as compared to race, ethnic and national origin.

The Committee was aware of this situation in 2003, and was concerned that this 'may lead to inconsistencies in discrimination laws and differential levels of protection according to the categorization of discrimination (i.e. race, ethnic origin, colour, nationality, etc.), and create difficulties for the general public as well as law enforcement agencies. The Committee recommends that the State party extend the amending regulations to cover discrimination on the grounds of colour and nationality.'<sup>15</sup> Although the Equality Act 2010 has addressed most of these concerns in Great Britain, the situation remains the same in Northern Ireland. The Advisory Committee for Framework Convention for the Protection of National Minorities ('FCNM') recommended that 'existing inconsistencies in anti-discrimination legislation are removed.'<sup>16</sup>

We remind the Committee of its 2003 recommendation to the UK to 'introduce a single comprehensive law, consolidating primary and secondary legislations, to provide for the same protection from all forms of racial discrimination.'<sup>17</sup> We encourage the Committee to urge the Northern Ireland Assembly to introduce a Single Equality Bill in Northern Ireland as a matter of priority.

#### **3.2 Section 75 Northern Ireland Act 1998**

As noted in the State Report, Section 75 Northern Ireland Act 1998 ('s75') provides a duty on designated public authorities in Northern Ireland to have due regard to the need to promote equality of opportunity between various equality categories, including persons of different racial group and religious belief. We believe that this is an important and potentially powerful tool to review and amend policies which could have the effect of creating or perpetuating

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[http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/51/A\\_Bill\\_of\\_Rights\\_for\\_Northern\\_Ireland\\_%28December\\_2008%29.pdf](http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/51/A_Bill_of_Rights_for_Northern_Ireland_%28December_2008%29.pdf).

<sup>14</sup> Para 2, State Report.

<sup>15</sup> Para 15, Concluding Observations.

<sup>16</sup> Para 63, Advisory Committee on FCNM, Opinion on UK's 2<sup>nd</sup> Periodic Report, 2007, ACFC/OP/II(2007)003, found at [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/Table\\_en.asp#United\\_Kingdom](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#United_Kingdom).

<sup>17</sup> Para 15, Concluding Observations.

racial discrimination.<sup>18</sup> However, many public authorities do not apply s75 correctly, or at all, which undermines its effectiveness.

We draw the Committee's attention to five key issues, which undermine the operation and objectives of s75. First, public authorities often apply s75 in a procedural, as opposed to substantive, manner. This was one of the central problems identified in a review of s75 by the Equality Commission for Northern Ireland ('ECNI') in 2009.<sup>19</sup> Secondly, public authorities often do not refer to underlying data, which prevents public authorities from understanding how their policies may impact upon minorities. Where data is used, and an equality group is found to be impacted upon to a greater extent by a policy, public authorities have found this to be due to 'self selection'<sup>20</sup> or an irregularity of data,<sup>21</sup> rather than analysing the impacts on equality.

Thirdly, there is a fundamental misunderstanding of the concept of 'equality of opportunity'. For example, public authorities often find that the 'universal application' of their policies allows for a positive or neutral impact on all equality groups.<sup>22</sup> This does not take account of the possibility of indirect discrimination and the need to facilitate ethnic minority participation. Fourthly, many public authorities only carry out assessments of equality impacts after the proposed policy has been decided upon or even adopted.<sup>23</sup> It is now settled jurisprudence that public authorities are 'not entitled to formulate policy before any equality impact assessment... it is unlawful to adopt a policy contingent on an assessment.'<sup>24</sup> Otherwise, the impact assessment would amount to 'policy-based evidence rather than evidence-based policy.'<sup>25</sup>

Finally, attempts to enforce the application of s75 through our local courts have been unsuccessful, due to a resistance from the public authorities involved and a conservative reading of s75 by our local courts. Most recently, a judgment of our local high court<sup>26</sup> found that, although the assessment of equality impacts was to be carried out after the adoption of a new policy, 'a preparedness to enter into dialogue and to alter one's position as a result of that dialogue'<sup>27</sup> was sufficient to discharge the s75 duty. CAJ believes that this runs contrary to a long line of cases in England and Wales, including Court of Appeal decisions, which clearly set out the need to assess equality impacts in advance.<sup>28</sup>

We are concerned that the lack of proper implementation of s75 is seriously limiting its ability to help eliminate racial discrimination and promote equality of opportunity. UNCESCR supported this view in its last round of reporting on the UK. It was 'concerned about the persistent levels of deprivation and inequality throughout Northern Ireland, despite the

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<sup>18</sup> See Article 2(1)(c) CERD.

<sup>19</sup> ECNI, S75 Keeping it effective, November 2009, found at <http://www.equalityni.org/archive/pdf/EffectivenessReviewFinalRpt1108.pdf>.

<sup>20</sup> The criminal justice agencies have claimed that individuals 'self-select' to be impacted upon by a policy, by committing crimes. The extension of this argument would be that national minorities self-select to be impacted upon by policies due to, for example, speaking minority languages. This is both counter-intuitive and contrary to s75. See, for example, CAJ's response to Justice Bill EQIA consultations, [www.caj.org.uk](http://www.caj.org.uk).

<sup>21</sup> Where the increased participation of Catholic lawyers was found in a consultation regarding a change to defence remuneration, the NI Courts and Tribunals Service ('NICTS') chose not to analyse this trend any further, as 'the proposals do not target these groups and it is the NICTS's view that the greater impact arises from the fact there are more people from these groups within the survey.' (See para 6.5 <http://www.courtsni.gov.uk/NR/rdonlyres/541F7FC0-53CF-4E95-B7E2-B1909E0336CA/0/FINALCrownCourtRemunerationSection75240910.pdf>.)

<sup>22</sup> See various CAJ responses to draft budget 2011-15 consultations, at [www.caj.org.uk](http://www.caj.org.uk).

<sup>23</sup> See CAJ response to draft budget 2011-15 and Justice Bill EQIA consultations, [www.caj.org.uk](http://www.caj.org.uk).

<sup>24</sup> *Ibid*, at para 36.

<sup>25</sup> *R (Kaur and Shah) v London Borough of Ealing* [2008] EWHC 2062, at para 37.

<sup>26</sup> *Tasers* [2011] NIQB.

<sup>27</sup> *Ibid*, at para 37.

<sup>28</sup> In *R(C) v Secretary of State for Justice*, the Court of Appeal supported previous judgments that the assessment of equality impacts should be carried out 'not as a rearguard action following a concluded decision, but as an essential preliminary to any such decision. Inattention to it is both unlawful and bad government.' *R(C) v Secretary of State for Justice* [2008] EWCA Civ 882, at para 49, quoting Sedley J, in *R(BAPIO) v SSHD* [2007] EWCA Civ. 1139, at para 3. See also *Arden LJ in R(Elias) v SSHD* [2006] 1 WLR 321 [274].

adoption of the Northern Ireland Equality Impact Assessment.<sup>29</sup> It recommended 'that the human rights framework, including the Equality Impact Assessment, be effectively implemented in Northern Ireland.. [to ensure] the development of adequate policies and targeted measures to promote substantive equality.'<sup>30</sup>

The correct application of s75 is particularly important given that the Northern Ireland Assembly does not have in place any other effective measure to review legislation, as required by Article 2(2)(c) CERD. By contrast, the Joint Committee on Human Rights reviews all legislation emanating from the UK Parliament, to ensure that it is human rights compliant. We encourage the Committee to urge designated public authorities in Northern Ireland to ensure the robust application of s75 in order to help eliminate racial discrimination and promote equality of opportunity.

### **3.3 Special measures – Police 50:50**

Article 2(2) CERD allows for states parties to adopt special and concrete measures to ensure the adequate development of certain racial groups. One such measure in Northern Ireland was the Police (Northern Ireland) Act 2000, which provided for all recruitment to the Police Service of Northern Ireland ('PSNI') involving six or more posts to be allocated on a 50:50 basis for Catholics and Protestants/other ('the Police 50:50 Policy') to address the serious under-representation from the Catholic community. In March 2011, the government discontinued the Police 50:50 Policy.<sup>31</sup> However, CAJ believes that the Police 50:50 Policy was necessary to ensure the participation of Catholics in the police force.

We understand that special measures should 'not be continued after the objectives for which they were taken have been achieved'.<sup>32</sup> The Secretary of State for Northern Ireland found that Catholic representation among police officers has increased from 8.3% to 29.76% and that, '[w]ith this transformation in the composition of the PSNI.. the use of these special measures can no longer be justified.'<sup>33</sup> However, CAJ believes that the objectives of the Police 50:50 Policy have not been achieved and that the lapsing of the Police 50:50 Policy, without alternative measures put in place, could undo the advances that have been made. Although there has been a major increase in Catholic officers in the PSNI,<sup>34</sup> this proportion is still very low, when compared to the 42.7% available for work at the last census.<sup>35</sup> Catholic representation among civilian staff and senior officers is even lower, at 18% and 16% respectively.<sup>36</sup>

It is expected that, now the Police 50:50 Policy has come to an end, Catholic representation will decrease further, for five key reasons. First, the application rate to the PSNI from the Catholic community has been steadily decreasing since 2007.<sup>37</sup> Secondly, the relatively recent engagement by the republican community in policing means that recruitment from that section of the Catholic community will still be at a much less advanced stage.<sup>38</sup> Thirdly, there are marked differentials in the success rates of Catholic and non-Catholic applicants in the

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<sup>29</sup> Concluding observations of the Committee on Economic, Social and Cultural Rights: United Kingdom, 12 June 2009, at para 31.

<sup>30</sup> *Ibid.*

<sup>31</sup> See press release of 22 March 2011, found at <http://www.nio.gov.uk/secretary-of-state-to-end-the-use-of-the-temporary-50-50-recruitment-provisions/media-detail.htm?newsID=17681>.

<sup>32</sup> Article 1(4) CERD.

<sup>33</sup> Press release accompanying launch of Police 50:50 Policy consultation document on 11 November 2010, *supra*.

<sup>34</sup> See Police 50:50 Policy consultation document, *supra*.

<sup>35</sup> It is further worth bearing in mind that the census figures are ten years old, and there is a possibility that this percentage could increase in the planned 2011 census.

<sup>36</sup> See Police 50:50 Policy consultation document, *supra*.

<sup>37</sup> See Police 50:50 Policy consultation document, *supra*, at Annex A.

<sup>38</sup> A New Beginning: Policing in Northern Ireland, the Report of the Independent Commission on Policing in Northern Ireland ('the Patten Report'), 1999, found at <http://cain.ulst.ac.uk/issues/police/patten/patten99.pdf>.



initial selection test, assessment centre and medical assessment (11% compared to 18% respectively).<sup>39</sup>

Fourthly, we are concerned by the low retention rate of Catholic officers at the PSNI.<sup>40</sup> Indeed, the Advisory Committee to FCNM has noted the 'higher abandonment rate among Catholics from the Police Service of Northern Ireland than among Protestants.'<sup>41</sup> A 2009 report states that, of the 132 officers who had left the PSNI between 2001 and 2006, 67.4% were Catholic.<sup>42</sup> Indeed, the lower retention and application rate is not surprising, given the increased residual terrorist threat to Catholic officers.<sup>43</sup> Finally, the impending cuts to public services has brought about a recruitment freeze in the public sector, including the PSNI.<sup>44</sup>

CAJ is concerned that the lack of Catholic representation would have negative impacts, not only within the PSNI, but throughout the community in Northern Ireland, which is a deeply divided society. Furthermore, the government's discussion of the Police 50:50 Policy suggests a fundamental lack of understanding in relation to the need for special measures. When screening for potential equality impacts of the ending of the Police 50:50 Policy, the government stated that 'the restoration of merit based recruitment would reduce the negative impact of the existing provisions on equality of opportunity.'<sup>45</sup> By contrast, we believe that the Police 50:50 Policy was in place precisely to try to promote equality of opportunity.

Therefore, CAJ is concerned that the Police 50:50 Policy has come to an end and encourages the Committee to urge the UK government and the PSNI to put alternative measures in place to help develop Catholic participation in the PSNI.

#### **4. Article 3 - Segregation**

CAJ was surprised that the State Report did not include any information on cohesion strategies in Northern Ireland, as it has a particularly segregated population. In July 2010, the Office of the First Minister and deputy First Minister ('OFMdFM') launched a public consultation on its new Cohesion, Sharing and Integration ('CSI') policy.<sup>46</sup> CAJ is concerned that CSI does not place sufficient emphasis on the need for equality in establishing good relations. We have long maintained the importance of equality and human rights in addressing community relations and, in particular, our divided society in Northern Ireland.

We are concerned that the primacy placed on 'integration' as a goal, without sufficient regard to inequalities, could inadvertently deepen divisions. For example, given that 'fourteen of the fifteen most deprived areas in Belfast are highly segregated,'<sup>47</sup> if funding allocations are prioritised on the basis of shared spaces (as recommended under CSI<sup>48</sup>), the most disadvantaged areas are least likely to benefit from them. This would maintain or extend inequalities and social exclusion, which in turn could worsen community relations. Likewise,

<sup>39</sup> See PSNI Equality Impact Assessment on recruitment of police officers, 2007, at [http://www.psnipolice.uk/eqia\\_recruitment\\_full\\_report.pdf](http://www.psnipolice.uk/eqia_recruitment_full_report.pdf), and CAJ commentary at [http://www.caj.org.uk/files/2000/01/03/S186\\_Commentary\\_on\\_Equality\\_Impact\\_Assessment\\_of\\_PSNIPolice\\_Recruitment\\_April\\_2007.pdf](http://www.caj.org.uk/files/2000/01/03/S186_Commentary_on_Equality_Impact_Assessment_of_PSNIPolice_Recruitment_April_2007.pdf).

<sup>40</sup> The government has previously confirmed that 'of the 99 officers appointed in the last five years since 4 November 2001, and who had since left, 26 were Protestant, 72 were Catholic and 1 was not determined.' (Correspondence with CAJ, cited in CAJ's Annual Report 2006/7, found at [www.caj.org.uk](http://www.caj.org.uk).)

<sup>41</sup> The Opinion, *supra*, at para 243.

<sup>42</sup> Para 4.18, Page 36. Criminal Justice Inspection Northern Ireland, The impact of Section 75 of the Northern Ireland Act 1998 on the criminal justice system in Northern Ireland May 2009, found at <http://www.niprisonservice.gov.uk/publications/Criminal%20Justice%20Inspection%20Section%2075%20.pdf>.

<sup>43</sup> See, for example, <http://www.telegraph.co.uk/news/uknews/northernireland/7931957/Dissident-republicans-target-security-forces-for-second-time-in-a-week.html>.

<sup>44</sup> See, for example, <http://www.u.tv/News/Anger-at-PSNI-recruitment-freeze/91aee1e3-6fb1-4bfe-9b74-4c2d532b04f8>.

<sup>45</sup> Police 50:50 Policy consultation document, *supra*, at para 48.

<sup>46</sup> Consultation document can be found at [http://www.ofmdfmi.gov.uk/reformatted\\_final\\_print\\_version\\_csi\\_-\\_26.07.10.pdf](http://www.ofmdfmi.gov.uk/reformatted_final_print_version_csi_-_26.07.10.pdf). CAJ's full response to the CSI consultation can be found at [www.caj.org.uk](http://www.caj.org.uk).

<sup>47</sup> Para 3.27 CSI consultation document, *supra*.

<sup>48</sup> *Ibid*, para 3.6.

given the imbalance in waiting lists for social housing,<sup>49</sup> prioritised investment in shared housing could also extend inequalities in this regard. CAJ therefore encourages the Committee to urge the Northern Ireland Executive to address existing inequalities in any integration strategy.

## **5. Article 5 – Equal Enjoyment of Rights**

### **5.1 Article 5(a) Equal treatment before tribunals and all other organs administering justice**

#### **5.1.1 Irish Language in the Courts**

The Administration of Justice (Language) Act (Ireland) 1737 ('the 1737 Act') prohibits the use of any language other than English to be used as a 'working' language in the courts. This has been interpreted as a bar to using Irish in the court process.<sup>50</sup> This is deeply problematic, given that, in the Good Friday / Belfast Agreement, the government recognises 'the importance of respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland, the Irish language, Ulster-Scots and the languages of the various ethnic communities, all of which are part of the cultural wealth of the island of Ireland.'<sup>51</sup>

CAJ believes that the 1737 Act is contrary to the government's obligations under Articles 5(a), (d)(viii) and (e) CERD, and also the European Convention on Human Rights and the European Charter for Regional or Minority Languages ('the Charter'). We were disappointed with a recent Court of Appeal decision, which held that 'the imposition of a requirement that applications and proceedings in court proceedings should be in English does have the consequence of treating English speakers differently from non-English speakers... The different treatment, however, is manifestly necessary and proportionate in a democratic society.'<sup>52</sup>

The Department of Culture, Arts and Language (DCAL) website states that, as a result of the Charter, '[i]f Irish [language] users wish to speak to a non-Irish speaking Government official in Irish notice should be given so that an interpreter can be arranged, if this is possible'.<sup>53</sup> However, Irish can still not be used in the courts or in much of the administration in Northern Ireland. UNCESCR has noted that there is 'still no protection in respect of the Irish language in Northern Ireland'<sup>54</sup> and recommended that the government adopt an Irish Language Act 'with a view to preserving and promoting minority languages and cultural heritage'.<sup>55</sup> This follows on from the government's commitment in the St Andrews Agreement to 'introduce an Irish Language Act reflecting on the experience of Wales and Ireland and work with the incoming Executive to enhance and protect the development of the Irish language'.<sup>56</sup>

This was also supported by the Council of Europe Committee of Ministers, which recommended the government 'adopt and implement a comprehensive Irish language policy, preferably through the adoption of legislation'.<sup>57</sup> Despite so many international calls for action,

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<sup>49</sup> Catholics remain in the majority on social housing waiting lists and are nearly three times more numerous in north Belfast (Northern Ireland Housing Executive statistics, sent to Participation and Practice of Rights Project under Freedom of Information Request, 2009.)

<sup>50</sup> In the Matter of an Application by Caoimhín Mac Giolla Catháin for Judicial Review, [2010] NICA 24, found at [http://www.courtsni.gov.uk/NR/rdonlyres/F7D7F577-64B4-4265-9D87-3A57F77388F4/0/j\\_j\\_GIR7778Final.htm](http://www.courtsni.gov.uk/NR/rdonlyres/F7D7F577-64B4-4265-9D87-3A57F77388F4/0/j_j_GIR7778Final.htm).

<sup>51</sup> Good Friday / Belfast Agreement, *supra*.

<sup>52</sup> In the Matter of an Application by Caoimhín Mac Giolla Catháin for Judicial Review, [2010] NICA 24, found at [http://www.courtsni.gov.uk/NR/rdonlyres/F7D7F577-64B4-4265-9D87-3A57F77388F4/0/j\\_j\\_GIR7778Final.htm](http://www.courtsni.gov.uk/NR/rdonlyres/F7D7F577-64B4-4265-9D87-3A57F77388F4/0/j_j_GIR7778Final.htm).

<sup>53</sup> [www.dcalni.gov.uk](http://www.dcalni.gov.uk).

<sup>54</sup> Concluding observations of the Committee on Economic, Social and Cultural Rights, June 2009, *supra*, at para 37.

<sup>55</sup> *Ibid*.

<sup>56</sup> St Andrews Agreement, *supra*, at Annex B.

<sup>57</sup> Recommendation RecChL(2010) 4 of the Committee of Ministers on the Application of the European Charter for Regional or Minority Languages by the United Kingdom. 21 April 2010.

the Irish Language Act has not progressed and currently only an Irish Language Strategy is proposed by DCAL. We therefore encourage the Committee to urge the UK Parliament to repeal the 1737 Act and the Northern Ireland Assembly to introduce an Irish Language Act, as required in the St Andrew's Agreement.

### 5.1.2 Northern Ireland Prison Service ('NIPS')

CAJ believes that NIPS does not achieve the equal enjoyment of rights for prisoners. In particular, there is a lack of monitoring, access to religious services, diversity training and review. First, we believe that a regular monitoring scheme should be introduced covering prisoners' treatment, access to regime activities and services by religion or community background, ethnic origin, disability, age and nationality. Following the Good Friday / Belfast Agreement, the Criminal Justice Review ('CJR') was set up to review the criminal justice system in Northern Ireland.<sup>58</sup> In 2000, it recommended that all elements of the criminal justice system undertake such equity monitoring,<sup>59</sup> but 11 years later this has still not been developed or implemented.

Secondly, where monitoring has taken place, there has been concern regarding Catholics and non-nationals in the prison system. The *Inside View* report states, for example, 'the current statistics still illustrate that the number of Catholics being adjudicated on is high and this needs further and ongoing monitoring and analysis.'<sup>60</sup> Complaints to the Prisoner Ombudsman suggest that significant problems exist in relation to application of policies and procedures affecting prisoners who do not have a good command of the English language.<sup>61</sup>

The Northern Ireland Prison Rules state that 'all prisoners shall be allowed to practice their religion to the extent compatible with good order and discipline' and that a spiritual representative will visit prisoners who are 'sick, under restraint, or confined to a cell.'<sup>62</sup> Nonetheless, numerous recommendations in recent reports on the prison system relate to the need for better access to spiritual representation and religious services for all prisoners.<sup>63</sup> CAJ notes the Committee's recommendation to 'make the necessary changes to the prison regime to take into account prisoners' cultural and religious practices.'<sup>64</sup>

Thirdly, various reports have demonstrated the need for specific and general staff training needs in relation to diversity issues.<sup>65</sup> This was a recommendation made by the CJR, and which NIPS maintains has already been 'implemented.'<sup>66</sup> In this regard, we do believe that Northern Ireland has sufficiently developed and strengthened 'anti-racist and gender-sensitive human rights training for public officials, including personnel in the administration of justice, particularly in law enforcement, correctional and security services.'<sup>67</sup> The most recent review of NIPS, in February 2011, did not make any mention of ethnic minority issues, save to assert

<sup>58</sup> See [http://www.nio.gov.uk/review\\_of\\_the\\_criminal\\_justice\\_system\\_in\\_northern\\_ireland.pdf](http://www.nio.gov.uk/review_of_the_criminal_justice_system_in_northern_ireland.pdf).

<sup>59</sup> Specifically, the CJR states: 'we recommend that the Criminal Justice Board and its research sub-committee be tasked with developing and implementing a strategy for equity monitoring the criminal justice system, as it affects categories of people, in particular by community background, gender, ethnic origin, sexual orientation and disability, whilst ensuring that this is done in a way that does not compromise judicial independence.' Criminal Justice Review Group, *Review of the Criminal Justice System in Northern Ireland* (Belfast: Stationary Office Bookshop, 2000), para. 3.38.

<sup>60</sup> Northern Ireland Prison Service, *The Inside View: A review of equality of opportunity of prisoners on the basis of religion, in relation to our s75 statutory duties*, May 2009.

<sup>61</sup> The Prisoner Ombudsman for Northern Ireland, *Annual Report April 2008 – March 2009*, June 2009.

<sup>62</sup> Rules 56 and 59, *The Prison and Young Offenders Centre Rules* (Northern Ireland) 1995.

<sup>63</sup> Complaints of this nature are, for example, noted in the Prisoner Ombudsman Annual Report. (The Prisoner Ombudsman for Northern Ireland, *Annual Report April 2008 – March 2009*, June 2009. The Prisoner Ombudsman for Northern Ireland, *Annual Report April 2009 – March 2010*, June 2010.)

<sup>64</sup> Para 5(f), the Committee's General recommendation 31 on Criminal Justice, *supra*.

<sup>65</sup> Training is required on the cultural differences of the Catholic and Protestant communities, Irish Travellers and foreign nationals. For more specific information, please see the CAJ report which examines approximately 40 reports on the prison service. See: CAJ, *Prisons and Prisoners in Northern Ireland: Putting Human Rights at the Heart of Prison Reform*. 2010. [http://www.caj.org.uk/files/2011/01/17/prisons\\_report\\_web2.pdf](http://www.caj.org.uk/files/2011/01/17/prisons_report_web2.pdf)

<sup>66</sup> *Ibid*.

<sup>67</sup> Para 133 Durban Plan of Action.

that the next review will 'look at diversity and the extent to which the prison is meeting the needs of diverse groups, such as... foreign nationals.'<sup>68</sup> We maintain that these issues should be reviewed on a more regular basis, and that they should include all race categories listed in Article 1 CERD, not just 'foreign nationals'.

We encourage the Committee to urge NIPS to introduce diversity training and monitoring in Northern Ireland's prisons, as a step towards ensuring the full implementation of CERD.

### **5.1.3 Police Ombudsman for Northern Ireland**

CAJ notes, in the Committee's Concluding Observations on the UK in 2003, that it welcomed 'the establishment of the Police Ombudsman for Northern Ireland.'<sup>69</sup> It also notes the Committee's request that states parties ensure that any claims against the police officials are 'subject to independent and effective scrutiny.'<sup>70</sup> Unfortunately, CAJ does not believe that the Office of the Police Ombudsman for Northern Ireland ('OPONI') fulfils these requirements.

Despite the claim, in the State Report, that OPONI has 'independent control of the police complaints system',<sup>71</sup> a recent report by CAJ into OPONI's treatment of historic cases<sup>72</sup> found that financial irregularities, irregularities in the recruitment process, and discrepancies relating to the process of security clearance raised serious concerns regarding the independence of and political interference in OPONI. Indeed, the former Chief Executive of OPONI resigned in April 2011, due to claims that OPONI's independence was being undermined.<sup>73</sup> As a result, the Minister of Justice ordered a report into these allegations, which found 'clear interference in the role of the Office and due process.'<sup>74</sup> A further review of the operational independence of OPONI, by the Criminal Justice Inspection, is currently ongoing.<sup>75</sup>

In relation to effectiveness, recent investigations into historic cases highlighted a tendency towards finding 'failings' but stopping short of more detailed recommendations which might secure accountability for those failings, as is required from an investigation compliant with Article 2 European Convention on Human Rights ('ECHR'). Furthermore, CAJ's report found OPONI's investigations into historic cases to lack the efficiency and transparency required. It found that the investigative process is inexplicably slow and there were concerns about the level, quality, and depth of research and investigation they entailed. Finally, it found that the frequency and nature of communication and willingness to consider views of relatives, and inequality of treatment in relation to prior access to reports needed attention.

Given the above findings in relation to historic cases, CAJ has concerns that similar failings could be apparent in relation to OPONI's treatment of more recent complaints concerning discriminatory or racist behaviour. We encourage the Committee to urge OPONI to undertake more independent, effective, efficient and transparent investigations.

### **5.1.4 Counter-terrorism and Stop and Search**

CAJ shares the Committee's concern that 'measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent, or national or

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<sup>68</sup> Page 16, Review of NIPS, Interim Report, February 2011, found at <http://www.dojni.gov.uk/index/publications/publication-categories/pubs-departmental-business/review-of-the-northern-ireland-prison-service-interim-report-february-2011.pdf>.

<sup>69</sup> Para 8, Concluding Observations.

<sup>70</sup> Guidelines for the CERD-specific document to be submitted by states parties, CERD/C/2007/1, 13 June 2008.

<sup>71</sup> Para 171, the State Report.

<sup>72</sup> CAJ, *Human Rights and Dealing with Historic Cases - A Review of the Office of the Police Ombudsman for Northern Ireland*, June 2011, found at [http://www.caj.org.uk/files/2011/06/16/OPONI\\_report\\_final1.pdf](http://www.caj.org.uk/files/2011/06/16/OPONI_report_final1.pdf).

<sup>73</sup> See <http://www.bbc.co.uk/news/uk-northern-ireland-13094132>.

<sup>74</sup> Para 39, Police Ombudsman Investigation Report, Tony McCusker, 16 June 2011, found at <http://www.dojni.gov.uk/index/media-centre/police-ombudsman-investigation-report.pdf>.

<sup>75</sup> [http://www.cjini.org/NewsAndEvents/2009/2010-\(1\)/April---June/CJI-to-review-independence-of-Police-Ombudsman-s-O.aspx](http://www.cjini.org/NewsAndEvents/2009/2010-(1)/April---June/CJI-to-review-independence-of-Police-Ombudsman-s-O.aspx).

ethnic origin.<sup>76</sup> Worryingly, UNCESCR has stated that the UK government has not yet undertaken to ensure systematically that 'counter-terrorism measures do not have a discriminatory effect on the enjoyment of the Covenant rights on certain groups in the State party, in particular ethnic and religious minorities.'<sup>77</sup>

However, as is clear from the July 2011 report by the UK's Independent Reviewer of terrorism legislation, '[s]tatistics for the gender, age and ethnicity of terrorism suspects are not collected in Northern Ireland.'<sup>78</sup> Similarly, Northern Ireland does not release any statistics on the ethnic origin of those individuals 'stopped and searched' under counterterrorism legislation. We encourage the Committee to urge the Northern Ireland Assembly and PSNI to monitor the application of counter-terrorism legislation in Northern Ireland to ensure that it does not have a discriminatory effect on ethnic and religious minorities.

Section 44 of the Terrorism Act 2000 ('s44') allows for a 'stop and search' procedure to be carried out by police in designated areas. Prior to its suspension in 2010, the Committee was 'concerned that a disproportionately high number of 'stops and searches' are carried out by the police against members of ethnic or racial minorities.'<sup>79</sup> The suspension of s44 came as a result of the European Court of Human Rights 2010 judgment ('the Gillen Judgment') that 'there is a clear risk of arbitrariness in the grant of such a broad discretion to the police officer.'<sup>80</sup> Although the case did not concern ethnic minorities, the court noted that 'the risks of the discriminatory use of the powers against such persons is a very real consideration'.<sup>81</sup>

This is of considerable concern, given that the comparable sections 21 and 24 Justice and Security (NI) Act 2007 ('ss21 & 24'), which apply only to Northern Ireland, are still in force. Despite awareness of the incompatibility of s44 with human rights norms, the PSNI has made clear that it intends to use ss21 & 24 in its place, even though they embody wider powers and thus do not comply with human rights obligations. The Policing Board stated in July 2010, that 'in light of the [Gillen Judgment] ruling and following the changes in guidance regarding S44, PSNI has decided to move away from S44 in favour of.. S21 & 24.'<sup>82</sup> Indeed, in the quarter directly following the Gillen Judgment, the number of people in Northern Ireland stopped under ss21 & 24 increased by over 2,500, as compared to the previous quarter and the equivalent time period of the previous year.<sup>83</sup>

Ss21 & 24 (like s44) does not require 'reasonable grounds' for suspicion and there are no criteria to be met. This allows the police to stop and search anyone without any reason, and without sufficient safeguards against abuse. Indeed, anecdotal evidence suggests that ss21 & 24 have been perceived to be used as a 'tool of harassment' and in a discriminatory manner.<sup>84</sup> Therefore, we have urged the government to ensure that sufficient safeguards are put in place<sup>85</sup> when ss21 & 24 are amended through the Protection of Freedoms Bill.<sup>86</sup> For example, we are concerned that the '[p]owers of stop and search for the military.. will not be

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<sup>76</sup> Para 5, UN GA 57<sup>th</sup> session, supplement 18 (A/57/18), Chapter XI, section C. See also paras 4(b) and 5(j) General Recommendation 31 on the criminal justice system.

<sup>77</sup> Para 17, Concluding observations of UNCESCR, June 2009, *supra*.

<sup>78</sup> Report on the operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006, David Anderson QC, Independent Reviewer of Terrorism Legislation, presented to Parliament July 2011, found at [http://terrorismlegislationreviewer.independent.gov.uk/publications/Terrorism\\_Act\\_2000\\_and\\_2006-annual\\_independent\\_review2010.pdf](http://terrorismlegislationreviewer.independent.gov.uk/publications/Terrorism_Act_2000_and_2006-annual_independent_review2010.pdf).

<sup>79</sup> Para 19, Concluding Observations.

<sup>80</sup> Gillan and Quinton v UK, 4158/05 [2010] ECHR 28 (12 January 2010), at para 85, found at <http://www.bailii.org/eu/cases/ECHR/2010/28.html>.

<sup>81</sup> *Ibid*.

<sup>82</sup> Press release of the Policing Board of 9 July 2010, found at <http://www.nipolicingboard.org.uk/article/?id=10639>.

<sup>83</sup> See Table 3, page 70, Report of the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007, Bob Whalley CB, November 2011, found at [http://www.nio.gov.uk/independent\\_reviewers\\_third\\_report.pdf](http://www.nio.gov.uk/independent_reviewers_third_report.pdf).

<sup>84</sup> CAJ legal officer interviews with individuals 'stopped and searched'.

<sup>85</sup> See CAJ consultation response at [www.caj.org.uk](http://www.caj.org.uk).

<sup>86</sup> See Written Ministerial Statement from the Northern Ireland Office, 9 February 2011, found at <http://www.nio.gov.uk/written-ministerial-statement-stop-and-search-powers-under-the-justice-and-security-northern-ireland-act-2007/media-detail.htm?newsID=17506>  
<http://www.nio.gov.uk/written-ministerial-statement-stop-and-search-powers-under-the-justice-and-security-northern-ireland-act-2007/media-detail.htm?newsID=17506>

amended.<sup>87</sup> In the meantime, we remain deeply concerned about the continued application of ss21 & 24.

We therefore encourage the Committee to urge the UK Parliament to introduce sufficient safeguards to ss21 & 24, to ensure they cannot be used in a discriminatory manner. We also encourage the Committee to urge the Secretary of State for Northern Ireland to suspend the operation of ss21 & 24 until such safeguards have been introduced.

## **5.2 Article 5(b) The Right to Security of Person – Hate Crime**

CAJ is concerned that hate crime is not adequately reported, detected, recorded or prosecuted by the criminal justice agencies, and that insufficient convictions are brought. For example, although PSNI statistics record 3,148 hate incidents in the 2009-10 financial year, just over 2,000 of which were classified as crimes<sup>88</sup> and in the (calendar) year 2009, there was just one conviction recorded for hate crime.<sup>89</sup> Indeed, the Advisory Committee on FCNM stated in 2007 that '[f]urther resources need to be devoted to identifying and prosecuting hate crime in Northern Ireland.'<sup>90</sup> We refer the Committee to the submission of the Northern Ireland Council on Ethnic Minorities on the State Report, which provides a full overview of the issues arising in relation to hate crime.

In addition, CAJ is concerned that the criminal justice agencies do not have a sufficient understanding of hate crime. In a recent Department of Justice ('DOJ') consultation on a Community Safety Strategy for Northern Ireland,<sup>91</sup> DOJ used a different definition for hate crime to that used by many criminal justice agencies. The consultation document defines hate crime as 'any crime which is motivated by prejudice or hostility' towards a person based on the relevant characteristics.<sup>92</sup> However, PSNI reporting forms define hate crime as any crime 'perceived to be' motivated by such prejudice, by the victim or any other person.

The importance of this distinction was made clear in the Macpherson Report, for the Stephen Lawrence inquiry.<sup>93</sup> We recognise that the Criminal Justice (No. 2) (NI) Order 2004 refers to offences motivated by hostility as an aggravating factor for sentencing. However, we recommend that DOJ use the best practice and more expansive definition of hate crime, especially given the multi-agency approach. Indeed, this definition was used in the screening form used to assess the equality impacts of the hate crime proposals.<sup>94</sup>

In the equality screening of hate crime proposals for the Community Safety Strategy consultation, there were further indications of the lack of understanding of the nature of hate crime. First, it stated that Northern Ireland's diversity can have 'an adverse impact on rapidly changes [sic] community'.<sup>95</sup> This suggests that increased tension and hate crime occurrence is an adverse impact resulting from a more diverse and multi-identity society. However, diverse identities have always been present in our society, and it is inappropriate to charge newly arriving members with the adverse impact of hate crime. Rather, it is ongoing prejudice in general, and a failure to effectively combat hate crime in particular, that allows for tensions and hate crime to continue.

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<sup>87</sup> Ibid.

<sup>88</sup> PSNI Annual Statistical Report: Report No. 3, Hate Incidents and Crimes, 1st April 2009 – 31st March 2010, p3.

<sup>89</sup> *Hansard* Written Answers, 8 October 2010, AQW 710/11.

<sup>90</sup> Para 130, Advisory Committee on FCNM, Opinion on UK's 2<sup>nd</sup> Periodic Report 2007, *supra*.

<sup>91</sup> Department of Justice. Building Safer, Shared and Confident Communities: a consultation on a new community safety strategy for Northern Ireland. January 2011. [http://www.dojni.gov.uk/index/public-consultations/current-consultations/building\\_safer\\_shared\\_and\\_confident\\_communities\\_consultation\\_paper.pdf](http://www.dojni.gov.uk/index/public-consultations/current-consultations/building_safer_shared_and_confident_communities_consultation_paper.pdf)

<sup>92</sup> Ibid, at para 6.3.2.

<sup>93</sup> See <http://www.archive.official-documents.co.uk/document/cm42/4262/4262.htm>.

<sup>94</sup> See [http://www.dojni.gov.uk/index/public-consultations/archive-consultations/equality\\_-\\_strategy\\_consultation\\_\\_\\_8211\\_\\_proposal\\_to\\_develop\\_and\\_publish\\_draft\\_proposals\\_for\\_a\\_strategic\\_approach\\_to\\_addressing\\_hate\\_crime2.pdf](http://www.dojni.gov.uk/index/public-consultations/archive-consultations/equality_-_strategy_consultation___8211__proposal_to_develop_and_publish_draft_proposals_for_a_strategic_approach_to_addressing_hate_crime2.pdf).

<sup>95</sup> Ibid, at page 8.



Secondly, in attempting to address the particular difficulties faced by multiple identities, DOJ found a major impact on all nine equality groups listed in s75 Northern Ireland Act 1998, even though only six groups are actually recognised within the screening form's working definition of a hate crime.<sup>96</sup> There is a danger that, by trying to include all s75 groups within multiple identities, the specific impacts and needs of those groups within the hate crime scope of application could be overlooked.

It is important that Northern Ireland's criminal justice agencies' staff receives sufficient training to fully understand the complex challenges faced by victims of hate crimes, including those with multiple identities. In this regard, we note the Committee's recommendation to 'develop, through appropriate education programmes, training in respect for human rights, tolerance and friendship among racial or ethnic groups, as well as sensitization to intercultural relations, for law enforcement officials: police personnel and persons working in the system of justice.'<sup>97</sup> Furthermore, in the Durban Plan of Action, the World Conference underlined 'the importance of fostering awareness and providing training to the various agents in the criminal justice system to ensure fair and impartial application of the law.'<sup>98</sup>

We encourage the Committee to urge the Northern Ireland Executive, and in particular the Department of Justice, to address the criminal justice agencies' limited understanding, reporting, detection, recordal, prosecution and conviction rates of hate crime.

### **5.3 Article 5(c) – Equal Participation in Public Affairs**

CAJ is concerned that ethnic minorities are not sufficiently represented in the civil service in Northern Ireland. A recent report by the Northern Ireland Statistics and Research Agency ('NISRA') found that only 0.2% civil service staff is from minority ethnic groups.<sup>99</sup> This represents only a quarter of that expected from the 2001 census, which found 0.8% working age population from an ethnic minority background.<sup>100</sup>

Furthermore, the 2001 census statistics are now ten years old, and we expect that the results of the 2011 census will show a much larger working age population from an ethnic minority background in Northern Ireland. For example, NISRA research<sup>101</sup> has shown 3% working age population in Northern Ireland coming from EU Accession Eight countries alone in 2009.<sup>102</sup> As a result, the proportion of ethnic minority staff in the civil service in Northern Ireland is disproportionately low. Change appears to be slow in this regard as, of the 44 applications from ethnic minorities for civil service jobs in 2010, not one individual was appointed.<sup>103</sup> CAJ urges the Committee to encourage the Northern Ireland Executive to address the under-representation of ethnic minorities in the Northern Ireland civil service.

We note that the Committee has specifically recommended that states parties should pursue strategies to promote proper representation of persons belonging to racial and ethnic groups in the police and the system of justice<sup>104</sup> and requested information on the recruitment of members of groups protected under CERD into the police force and other law enforcement agencies.<sup>105</sup> Given that this has not been addressed in the State Report in relation to Northern

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<sup>96</sup> Ibid, at pages 16 and 17.

<sup>97</sup> Para 5(b), General Recommendation 31 on Criminal Justice System.

<sup>98</sup> Para 89, Durban Plan of Action.

<sup>99</sup> See NISRA report *Equality Statistics for the Northern Ireland Civil Service*, 2011, found at <http://www.nisra.gov.uk/publications/NICS%20Equality%20Report%202011.pdf>.

<sup>100</sup> Ibid, at page 12.

<sup>101</sup> The number of mothers registering in Northern Ireland as being born outside of the UK and Ireland more than tripled from 2001 (700 mothers) to 2009 (2,300 mothers). See the Demography of Northern Ireland: Beyond 2001, David Marshall, NISRA, paper presented on 8 March 2011 at ECNI.

<sup>102</sup> Ibid.

<sup>103</sup> Page 12, *Equality Statistics for the Northern Ireland Civil Service*, NISRA, 2011, *supra*.

<sup>104</sup> Para 5(d), General Recommendation 31 on the Criminal Justice System.

<sup>105</sup> Guidelines for the CERD-specific document to be submitted by states parties, 2008.

Ireland, we would like to draw your attention to the under-representation of Catholics and ethnic minorities in the criminal justice agencies.

First, we repeat our concerns about the disproportionately low participation of Catholics in the Police Service of Northern Ireland ('PSNI'). Indeed, the Advisory Committee on FCNM recommended, in its 2007 Opinion on the UK, that the PSNI 'should continue its efforts to achieve a balanced representation of Catholic and Protestant officers'.<sup>106</sup> In addition to this, we are concerned by the low representation of ethnic minorities in PSNI staff. As of May 2011, ethnic minorities constituted only 0.47% police officers.<sup>107</sup> This is well below the expected proportion, given the working age population from an ethnic minority background in Northern Ireland, as discussed above. CAJ encourages the Committee to urge the PSNI to address the underrepresentation of ethnic minorities in its workforce.

Secondly, CAJ is concerned by the low proportion of Catholics in the Northern Ireland Prison Service ('NIPS') workforce. This concern was shared by the Advisory Committee on FCNM, which noted in 2007 that the 'number of Catholics employed in the prison service of Northern Ireland is particularly low'.<sup>108</sup> The Prison Review Team, established to conduct a review of the 'conditions of detention, management and oversight of all prisons' noted complaints of discriminatory attitudes and approaches within the prison service and highlighted its unrepresentative nature. It stated that '[a]t present, among prison managers and staff as a whole, 10% are Catholic, and 22% are women'.<sup>109</sup> There are generally few statistics on the number of ethnic minorities in the criminal justice agencies workforces.<sup>110</sup>

The CJI report on Prison Service Staff Training and Development recommended that 'as part of its wider human resources strategy the NIPS should continue to review the imbalances which are present in its workforce and the potential role that training can play in addressing these'.<sup>111</sup> Most recently, the Prison Review Team interim report recommended that 'work should also be done to encourage applications from groups that are currently under-represented and to identify any unnecessary barriers that deter them from joining or remaining in the prison service'.<sup>112</sup> CAJ encourages the Committee to urge NIPS to address the under-representation of ethnic minorities, including Catholics, in its workforce.

#### **5.4 Article 5(e) - Economic Rights**

CAJ is also concerned by the lack of equal enjoyment of economic rights for ethnic minorities in Northern Ireland, including Travellers and Roma, asylum seekers and refugees, but feel confident that other Northern Irish NGOs will raise these issues in detail with the Committee.

As noted above, Northern Ireland has a history of economic inequality suffered by the Catholic community. In 2005, the Northern Ireland Statistics and Research Agency's Multiple Deprivation Measures found that 13 of the 20 most deprived areas in Northern Ireland were predominantly Catholic.<sup>113</sup> Despite five years of investment and government strategies, the most recent Multiple Deprivation Measures, from March 2010, show that the number of

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<sup>106</sup> Para 247, the Opinion, *supra*.

<sup>107</sup> See PSNI Workforce Composition Figures at [http://www.psnipolice.uk/index/updates/updates\\_statistics/updates\\_workforce\\_composition\\_figures.htm](http://www.psnipolice.uk/index/updates/updates_statistics/updates_workforce_composition_figures.htm)

<sup>108</sup> *Ibid*, at para 243.

<sup>109</sup> Pg 52, Review of the Northern Ireland Prison Service: Conditions, management and oversight of all prisons, Interim Report, February 2011. Available at: [http://www.prisonreviewni.gov.uk/index/rwritten-representations/interim\\_report\\_february\\_2011.htm](http://www.prisonreviewni.gov.uk/index/rwritten-representations/interim_report_february_2011.htm).

<sup>110</sup> Several gaps appear in the statistics provided. See, for example, CJI report on the application of s75 on the criminal justice system, *supra*.

<sup>111</sup> CJI, Prison Service Staff Training and Development, June 2009, at para 3.10.

<sup>112</sup> Review of the Northern Ireland Prison Service: Conditions, management and oversight of all prisons, Interim Report, February 2011.

<sup>113</sup> See [http://www.nisra.gov.uk/deprivation/nimdm\\_2005.htm](http://www.nisra.gov.uk/deprivation/nimdm_2005.htm).



predominantly Catholic areas in the 20 most deprived has risen to 16 (80%).<sup>114</sup> UNCESCR is concerned by the persistent levels of deprivation and inequality throughout Northern Ireland and has noted the 'higher poverty levels among ethnic minorities, asylum seekers and migrants, older persons, single mothers, and persons with disabilities'<sup>115</sup> throughout the UK.

In relation to employment, the latest Labour Force Survey confirmed that Catholics continue to suffer higher economic inactivity rates than Protestants.<sup>116</sup> Similarly, the Northern Ireland Housing Executive statistics show that the number of individuals in housing stress in north Belfast has steadily increased from 1091 in 2005 to 1483 in 2009.<sup>117</sup> Catholics remain in the majority on social housing waiting lists and are nearly three times more numerous in north Belfast.<sup>118</sup> We encourage the Committee to urge the Northern Ireland Executive to address the economic inequalities suffered by the Catholic community in Northern Ireland.

### 5.5 Article 5(e)(v) - The Right to Education

CAJ is concerned that Northern Ireland's school curriculum could be indirectly discriminatory for pupils of non-Christian religions. In fact, by law, all schools in Northern Ireland must have a Christian ethos.<sup>119</sup> The core curriculum for religious education in Northern Ireland is Christian centred and only the four main Christian churches were invited to take part in a review of that curriculum in 2002.<sup>120</sup> We believe that religious education classes should include reference to all major religions, which would show tolerance and respect to national minorities. Indeed, the UN Special Rapporteur on Religion and Belief has urged governments to 'pay specific attention to the contents of syllabuses on religious education, which ideally should aim to be all-embracing.'<sup>121</sup>

Parents do have a right for their children to 'opt out' from religious education and collective worship in schools in Northern Ireland. However, pupils and their parents are often not aware of their opt-out rights.<sup>122</sup> Furthermore, schools often do not provide alternative educational activities for pupils opting-out,<sup>123</sup> which, we believe, amounts to an act of discrimination as a result of their religious identity. We recommend that the core curriculum be reviewed and that, when pupils do opt-out of religious education, alternative instruction be provided. We encourage the Committee to urge the Northern Ireland Executive to introduce non-Christian religious education within the school curriculum in Northern Ireland, and support parental choice for children not to participate in Christian practices.

### 6. Article 14 – Individual Complaints Mechanism

In its 2003 Concluding Observations, the Committee requested that the UK give high priority to its review of the optional declaration on Article 14 CERD, and give favourable consideration to introducing the individual complaints mechanism, as set out in Article 14.<sup>124</sup> CAJ is

<sup>114</sup> [http://www.nisra.gov.uk/deprivation/archive/Updateof2005Measures/NIMDM\\_2010\\_Statistics\\_Press\\_Release.pdf](http://www.nisra.gov.uk/deprivation/archive/Updateof2005Measures/NIMDM_2010_Statistics_Press_Release.pdf).

<sup>115</sup> Para 28, Concluding observations UNCESCR, June 2009, *supra*.

<sup>116</sup> 2009 Labour Force Survey Religion Report, updated 2010, found at [http://www.ofmdfmi.gov.uk/2009\\_lfs\\_religion\\_report\\_pdf](http://www.ofmdfmi.gov.uk/2009_lfs_religion_report_pdf)

<sup>117</sup> Northern Ireland Housing Executive statistics, sent to Participation and Practice of Rights Project under Freedom of Information Request, 2009.

<sup>118</sup> *Ibid*.

<sup>119</sup> Education and Libraries (Northern Ireland) Order 1986 (as amended), SR 1986/594, article 21.

<sup>120</sup> See [http://www.nicurriculum.org.uk/docs/background/curriculum\\_review/primsbt.pdf](http://www.nicurriculum.org.uk/docs/background/curriculum_review/primsbt.pdf).

<sup>121</sup> UN General Assembly (20 August 2007), "Interim Report of the Special Rapporteur on freedom of religion or belief", UN Doc A/62/280, paragraph 78.

<sup>122</sup> Mawhinney, A. and others (September 2010) *Opting Out of Religious Education: The Views of Young People from Minority Belief Backgrounds* (Belfast, Queens University); see also Richardson, N. (2007) "Rights and Religious Education in A Plural Northern Ireland", a paper presented at the Rights and Righteousness Conference on 1-2 November 2007 (Belfast: Northern Ireland Human Rights Commission).

<sup>123</sup> *Ibid*.

<sup>124</sup> Para 28, Concluding Observations.

disappointed that the government has not yet completed its review,<sup>125</sup> and has not made the declaration required in order to introduce the individual complaints mechanism for CERD in the UK.

We are not convinced by the UK's reasons for this delay, as set out in the State Report. First, the government suggests that there would be little advantage in introducing the individual complaints mechanism, given that 'the treaty monitoring committees are not courts, and they cannot award damages or produce a legal ruling on the meaning of the law.'<sup>126</sup> However, given that the UK has not yet introduced the provisions of CERD into its domestic legal system, the UK courts can also not provide these remedies. As a result, the individual complaints mechanism would provide an important additional avenue through which individuals in the UK could assert their rights under CERD.

Secondly, the UK suggests that the accession to the Optional Protocols to the Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW') and the Convention on Rights for Persons with Disabilities ('UNCRPD') provides empirical evidence to ascertain whether or not to accede to Article 14.<sup>127</sup> However, CEDAW and UNCRPD are entirely different treaties, involving different rights for a different equality group to CERD. The accession to their optional protocols cannot be used as an alternative to, or a testing ground for, the use of an individual complaints mechanism for CERD.

Also, the fact that so few cases have been brought under the individual complaints mechanism for CEDAW, and that none was deemed admissible, is not a reason to suggest the lack of need for individual complaints mechanisms for CEDAW, CERD or any other human rights treaty. We would suggest, rather, that this shows the lack of publicity and information provided by the UK on its accession to these Optional Protocols on the way in which they can be used to assert individuals' rights. Clearly, further to Article 24 CEDAW and Article 13 of its Optional Protocol, such publicity should have taken place. Indeed, the Committee on CEDAW stated in its most recent report on the UK that it should undertake public awareness and training programmes on the Optional Protocol, and raise awareness of the inquiry procedures provided therein.<sup>128</sup>

We encourage the Committee to urge the UK to make the optional declaration under Article 14 CERD and provide sufficient information to the public to facilitate use the individual complaints mechanism, as required.

## **7. Conclusion**

Although the government may have made some progress in relation to the application of CERD in Northern Ireland, we are concerned that many areas still require attention. We look forward to discussing these matters with the Committee in August 2011. We will bring all evidence to the meetings with the Committee in August 2011. Should the Committee require any further information, please contact us at the contact details listed on the cover page.

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<sup>125</sup> Para 362 State Report states that the 'experiment with the CEDAW OP has not provided sufficient empirical evidence to decide either way on the value of other individual complaint mechanisms.'

<sup>126</sup> Para 359, the State Report.

<sup>127</sup> Ibid, paras 360-362.

<sup>128</sup> Para 16, Committee on CEDAW's Concluding Observations on the UK, 2008.