

CAJ's Submission no. S455

CAJ's submission to the United Nations Human Rights Committee on Economic Social and Cultural Rights (ICESCR) on the UK's 6th Periodic Report

April 2016

About CAJ

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation working for human rights and affiliated to the International Federation of Human Rights (FIDH). CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. Our specific focus is on those human rights issues which are directly relevant to conflict and peace. This includes relevant economic, social and cultural rights as well as civil and political rights. We are concerned with combating impunity for violations in the past, guarantee non-recurrence by working for contemporary accountability, promote a rights based framework for the exercise of the freedoms of expression and assembly, advocate the application of the fundamental principles of equality and promulgate the benefits of a rights based society.

The CAJ works closely with other domestic and international human rights groups and makes regular submissions to a number of United Nations and European bodies established to protect human rights. CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and strategic litigation.

CAJ would not be in a position to do any of this work without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, the Human Rights Fund, the Joseph Rowntree Charitable Trust, the Paul D. Schurgot Foundation, UNISON and the Esmée Fairbairn Foundation. The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize

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Introduction

CAJ welcomes the 6th periodic report from the UK government in conformity with its obligation to submit itself regularly to scrutiny by the ICESCR Committee. We hope that the following material will be of help to the Committee in carrying out a full examination of the extent of the UK's compliance with the Covenant in so far as it applies to Northern Ireland. The following submission will focus on areas where problems exist or where further advances are needed in order to protect economic, social and cultural rights in Northern Ireland. The submission is divided into themes:

- **Welfare 'Reform' and Northern Ireland (Art. 3, 6, 9, 11, 12)**
- **Austerity and Northern Ireland (Art. 3, 6, 9, 11, 12)**
- **The anti-poverty strategy for Northern Ireland (Art. 3, 6, 9, 11, 12)**
- **The Equality Commission investigation into NI housing policy (Art 11)**
- **Women's inequality in Northern Ireland (Art. 3, 10)**
- **Rights Protections in the Northern Ireland peace agreements (Art. 1, 2)**
 - **Bill of Rights for Northern Ireland**
 - **Proposed repeal of the Human Rights Act**
 - **Irish language legislation**
- **Abortion legislation in Northern Ireland (Art. 12)**

Welfare ‘Reform’ and Northern Ireland (Art. 3, 6, 9, 11, 12)

Northern Ireland is a post-conflict and divided society, the impacts of welfare reform and austerity have the potential to entrench and exacerbate the patterns of deprivation and inequality which played a part in fuelling the conflict. Only some of the UK government’s welfare cuts have been implemented in Northern Ireland to date as the equivalent legislation to the Welfare Reform Act 2012 in Great Britain had previously been blocked by nationalist parties and the Green party in the Northern Ireland Assembly.¹ For not passing its welfare reforms the UK Government imposed economic sanctions (which it refers to as fines or penalties) on the Northern Ireland Executive to the equivalent of around \$3 million USD a week (2.65 million EUR). This along with other austerity cuts to the Executive’s budget brought the power sharing institutions established by the 1998 Belfast /Good Friday Agreement to the brink of collapse.

The December 2014 [Stormont House Agreement](#) between the UK government and parties in the Northern Ireland Executive provided for the passage of the Welfare Reform Act alongside a supplementary social welfare fund to mitigate against claimants in Northern Ireland losing benefits. Following the Stormont House Agreement, disagreements continued over the scope of a supplementary fund which led to neither provision progressing until November 2015 when an agreement was reached in, ‘A Fresh Start: the Stormont Agreement and Implementation Plan.’²

In January 2016 as an outworking of ‘A Fresh Start,’ a ‘Welfare Reform Mitigations’ Working Group Report was released, this report had taken into account some of the special circumstances of Northern Ireland and tried to address them within a limited timescale of four years and with a limited budget.³ Although we welcome this move towards mitigation for some vulnerable groups it cannot protect all those who will be affected by the welfare changes and is only transitional.

In its previous Concluding Observations on the UK the Committee requested data disaggregated on an annual basis across the grounds of discrimination on the impacts of welfare reform.⁴ Such data should be readily available in relation to Northern Ireland. The implementation legislation for the 1998 Belfast/Good Friday Agreement put in place a key provision to oblige public authorities to conduct Equality Impact Assessments on policy changes. Equality Impact Assessments involve examination of all available data to determine whether there will be adverse impacts across nine discrimination grounds. Where there are adverse impacts public authorities are then obliged by the law to consider alternative policies and mitigating measures.⁵

¹ The power sharing unicameral legislature established as part of the 1998 Belfast/Good Friday Agreement. The Assembly has social security law among its competencies. A mechanism known as a ‘petition of concern’ can mean legislation requires the consent of both nationalist (referring to Irish nationalist) and unionist (referring to the union with Great Britain) parties to proceed.

² A Fresh Start. The Stormont Agreement and Implementation Plan. 17 November 2015

³ Welfare Reform Mitigations Working Group Report, January 2016

⁴ [ICESCR, Concluding Observations 2009 on the UK](#), paragraph 42.

⁵ Northern Ireland Act 1998, section 75 and schedule 9.

However, implementation of this public sector equality duty has been sidelined throughout the welfare reform process, with the purpose or effect of disguising the equality impacts of the welfare reform agenda. The government ministry responsible for social security policy in Northern Ireland (the Department for Social Development) in its equality impact assessment on the bill missed out four of the nine discrimination categories (namely religious belief, racial group, political opinion and sexual orientation). Among other matters this means, in the context of a divided society, there was no proper analysis of the impact of welfare reform on Northern Ireland's two main communities. This is in a context whereby on every single official multiple deprivation indicator families from a 'Catholic' / 'nationalist' community still experience more deprivation than that of their 'Protestant' / 'unionist' counterparts, and hence will be disproportionately affected by welfare reform.⁶

The retrogressive nature of welfare cuts and introduced 'reform' agenda across the UK will no doubt be raised in evidence to the Committee from a range of groups. We wish to draw attention to obvious yet underplayed additional impacts such measures would have in Northern Ireland. It is evident from history that within the context of a post-conflict divided society real or perceived inequalities and disadvantage risk fuelling conflict. The areas hardest hit by conflict and deprivation will also be those hardest hit by the implementation of the UK government's welfare reforms.⁷ In the post-conflict context there are much higher rates of persons out of work due to a disability who will be disproportionately affected.

It is therefore no exaggeration to raise concerns that 18 years on from the Belfast/Good Friday Agreement, which envisaged frameworks to break from the historic patterns of discrimination and disadvantage particular to Northern Ireland, that welfare reform will in fact entrench and exacerbate these very patterns of inequality.⁸

The Committee may wish to ask the UK:

Why a full Equality Impact Assessment covering the nine statutory grounds was not conducted on the welfare reform bill in Northern Ireland;

What consideration it gave to retrogression in Covenant rights and the particular circumstances of Northern Ireland as a divided and post conflict society when imposing economic sanctions to pressure the devolved legislature into welfare cuts.

⁶ Nolan, Paul. (2013). [The Northern Ireland Peace Monitoring Report Number 2 \(Community Relations Council\)](#), page 92

⁷ Christina Beatty and Steve Fothergill. [The Impact of Welfare Reform on Northern Ireland](#) Centre for Regional Economic and Social Research and Sheffield Hallam University, page 5. This highlights that, for example, the new Derry-Strabane local government district will be the hardest hit by welfare reform and generally the most deprived areas across Northern Ireland will face the largest losses.

⁸ Evidence of this can be found in recent research carried out for the Equality Coalition by Prof Christine Bell and Dr Robbie McVeigh. (2016), *A Fresh Start for Equality? The Equality Impacts of the Stormont House Agreement on the 'Two Main Communities'*

Austerity in Northern Ireland (Arts. 3, 6, 9, 11, 12)

Throughout the reporting period the Northern Ireland Executive, whose competencies include the running of health, education, housing, infrastructure, justice and social security has seen a significant reduction in the budget it receives from the UK government. \$5.3 billion USD (4.7 billion EUR) was cut from the budget from 2008-15.⁹ As has happened elsewhere in the state party this has led to significant cuts in public spending and services in Northern Ireland, a small jurisdiction of around 1.8 million people. CAJ is deeply concerned about the regressive socioeconomic impact of current and upcoming cuts and the likelihood that they will exacerbate inequality and poverty.

There were crisis talks in Northern Ireland in 2013 on dealing with three outstanding issues from the peace settlement. These talks led to the December 2013 Haass-O'Sullivan Proposed Agreement and dealt with the issues of parades, flags and dealing with the past. The UK government did not participate in these talks, but did convene fresh successor talks which culminated with the aforementioned Stormont House Agreement published by the UK government in December 2014.¹⁰

It is notable that paragraphs 1-14 of the Stormont House Agreement do not deal with the above issues but rather deal with a package of financial measures which, when put together, read as a structural or fiscal adjustment programme. The measures include significant reductions in the size of the public sector (with an estimated up to 20,000 job losses); further reform of the public sector including an OECD review; tax cuts on the profits of businesses (Corporation Tax); social security cuts and consideration of the privatisation of public assets. The changes to the size of public sector are to be funded through increased borrowing. Even the implementation of the Stormont House Agreement will however not produce a 'balanced budget' due to further cuts announced by the new UK government on its election in May 2015 and subsequent budget in 2016.

No overarching *official* analysis of the potential implications on inequality of the fiscal measures within the Stormont House Agreement or new cuts has been published, despite the obligation to undertake Equality Impact Assessments. However, a research report for the Equality Coalition '*A Fresh Start for Equality? The Equality Impacts of the Stormont House Agreement on the Two Main Communities*' by Professor Christine Bell and Dr Robbie McVeigh examines this question. The report considered official data on the current levels of inequality between Protestants and Catholics and concluded:

...the economic model made explicit in the financial annex of the Stormont House Agreement is likely to deepen and widen inequality – both generally (between richer and poorer people) and in terms of the differences between Protestants and Catholics.¹¹

⁹ A Fresh Start Agreement, Section B, paragraph 1.1.

¹⁰ [Stormont House Agreement](#), Northern Ireland Office, December 2014.

¹¹ '*A Fresh Start for Equality? The Equality Impacts of the Stormont House Agreement on the Two Main Communities*' (paragraph 10 executive summary)

The research also highlighted that equality and eliminating inequality featured heavily in the Belfast/Good Friday Agreement and other successor agreements within the peace settlement and were seen as a pre-requisite to a just and lasting peace. It noted that the post-peace process reduction of inequalities in Northern Ireland had been achieved in the context of sustained state intervention with international oversight. However it cautioned that the Stormont House and Fresh Start Agreements departed from this approach with an absence of any formal commitments on equality between the two main communities at all.

The Committee may wish to ask the UK how it has assessed the impact of its austerity policies on Covenant rights in relation to the particular circumstances of Northern Ireland as a divided society emerging from conflict.

The Northern Ireland anti-poverty strategy on the basis of objective need

One key peace-agreement safeguard that protects Covenant rights is the statutory duty on the Northern Ireland Executive to adopt an anti-poverty strategy based on objective need. The 2006 (UK-Ireland) St Andrews Agreement led to legislation to oblige the Northern Ireland Executive to adopt such a strategy on the following terms:

s28E Strategy relating to poverty, social exclusion etc

(1)The Executive Committee shall adopt a strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on objective need.

(2)The Executive Committee—

(a)must keep under review the strategy; and

(b)may from time to time adopt a new strategy or revise the strategy.¹²

However the Northern Ireland Executive failed to adopt such a strategy. In 2014 CAJ took legal action against the Northern Ireland Executive through judicial review proceedings. We were successful with the Court holding in 2015 that it was clear that ‘no such’ anti-poverty strategy had in fact been adopted by the Northern Ireland Executive who had therefore acted unlawfully. The court also stated that:

“The concept of ‘objective need’ is obviously central to the statutory provision the intention of which is to remove or reduce the scope for discrimination by tying the allocation of resources to neutral criteria that measure deprivation irrespective of community background or other affiliation...It is difficult to see how the Executive could develop and deliver a Section 28E compliant strategy without adopting some agreed definition of objective need but that will be a matter for the Executive in due course.¹³

¹² s28E Northern Ireland Act 1998 (as inserted by the Northern Ireland (St Andrews Agreement) Act 2006).

¹³ [Application for Judicial Review by the Committee on the Administration of Justice](#) 2015 NIQB 59

The extent of poverty in Northern Ireland is outlined in the following statistics:

- 376, 000 people were in relative poverty in 2013-14, around one fifth of the population in Northern Ireland.¹⁴
- Child poverty in NI is twice that of the rest of the UK, 1 in 5 children in NI live in poverty and 1 in 10 of these children are living in extreme poverty and 1 in 10 households across the region are unable to keep their house warm and damp free.¹⁵
- The IFS is clear that the trajectory of child poverty in Northern Ireland is upwards; expecting child poverty to increase from 20.5% in 2012/13 to 29.3% in 2020/21.¹⁶ We currently have around 100 000 children living in poverty in Northern Ireland, in West Belfast that is 80% Catholic it has 40% of children in low income families.¹⁷
- The poverty gap between Catholics and Protestants has widened since 2002, with 32.5% of Catholics in poverty today compared to 18.5% of Protestants;¹⁸
- On the issue of women in poverty, there is no official analysis in Northern Ireland carried out at both an individual and household level, only carrying out analysis and data collection on a household level disguises the amount of women living in poverty.¹⁹

The Committee may wish to ask the UK how it will ensure an anti-poverty strategy based on objective need is taken forward in Northern Ireland with a view to the realisation of Covenant rights.

¹⁴ Prof Christine Bell and Dr Robbie McVeigh 'A Fresh Start for Equality? The Equality Impacts of the Stormont House Agreement on the 'Two Main Communities' (Equality Coalition 2016), page 34.

¹⁵ Horgan, Goretti cited in *Austerity and Inequality, 'A Threat to Peace?'* Conference report (Equality Coalition, 2015), page 73

¹⁶ Institute for Fiscal Studies. (2014). *Child and working-age poverty in Northern Ireland over the next decade: an update* Browne, James, Andrew Hood and Robert Joyce

¹⁷ Prof Christine Bell and Dr Robbie McVeigh. (2016). *A Fresh Start for Equality? The Equality Impacts of the Stormont House Agreement on the 'Two Main Communities*, page 35

¹⁸ Kent, Gabi " Shattering the silence..." *Critical Social Policy* 2016, Vol. 36(1): 124–141.

¹⁹ Further information on the types of disaggregated data that is useful for gender budgeting can be found in Kate Bellamy. (2002). *Gender Budgeting: A Background paper for the Council of Europe's Informal Network of Experts on Gender Budgeting*, UK Women's Budget Group

The Equality Commission investigation into NI housing policy (Art 11)

In the list of issues (November 2015) the Committee asked about the supply of social and affordable housing and in previous Concluding Observations of 2009 the Committee asked the UK to intensify its efforts to ensure access to affordable housing and to review policies and develop effective strategies to tackle housing disadvantage for Catholic families in North Belfast. In 2012 the Council of Europe Human Rights Commissioner Thomas Hammarberg, visiting north Belfast, expressed concerns that ‘no action appears to have been taken’ to address such housing inequalities in response to the Committee’s concluding observation. In 2013 the UN Special Rapporteur Raquel Rolnik, also visiting north Belfast, called for additional efforts to ‘overcome persistent inequalities in housing in North Belfast’. In March 2016 the Equality Commission for Northern Ireland, reissuing an updated draft Statement of Inequality on Housing, also recognised housing inequality for Catholics in north Belfast.²⁰

Independent research on inequalities between the two largest ethnic groups (usually defined through the indicators of Protestant and Catholic) pointed not to the allocations system for social housing, which remains on the basis of objective need, but on decisions as to where housing is built concluding in relation to north Belfast:

The one thing that emerges with clarity is that there is a large and growing demand for housing for Catholics in north Belfast that is not being met by the statutory sector. In that sense, if nothing else, the situation is disturbingly redolent of the 1960s when one of the principle mechanisms for maintaining a gerrymander was simply refusing to build any houses *at all*.²¹

The Equality Commission’s Key Statement of Housing Inequalities also identified broader patterns of inequality with differing experiences of waiting lists for social housing across ethnic groups with particular impacts on Catholics and minority ethnic groups across Northern Ireland as a whole.²² During the monitoring period there were significant attempts to reform strategic housing policy by the Department of Social Development (DSD), the Northern Ireland ministry with responsibility for housing which proposed radical changes under its ‘*Facing the Future: Housing Strategy for Northern Ireland 2012-2017*’. However, far from addressing the above inequalities on the basis of objective need, regressive steps were instead envisaged.

²⁰ ‘Human Rights groups welcome recognition of Catholic Housing Inequality by Equality Commission’ Joint Statement by PPR (Participation and the Practice of Rights) and CAJ, 2 March 2016: <http://www.caj.org.uk/contents/1403>

²¹ Prof Christine Bell and Dr Robbie McVeigh. (2016). *A Fresh Start for Equality? The Equality Impacts of the Stormont House Agreement on the ‘Two Main Communities*, page 42

²² Draft Statement Key Inequalities in Housing and Communities (Equality Commission, 2016) http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/Housing-KeyInequalities_DraftStatement.pdf

In 2013 the Participation and Practice in Rights Project (PPR) produced its landmark *'Equality Can't Wait'* research report. This covered, among other matters a policy strand under the *'Facing the Future Strategy'* involving a *'fundamental review of the social housing allocations policy'* which proposed significantly moving away from objective need in social housing criteria which would have had major impacts on groups facing disadvantage. The Terms of Reference for the Review, which at the time was already underway despite an ongoing consultation, were to consider opening the social housing waiting list for persons with "no demonstrated housing need" as well as looking at redefining 'objective need' itself.²³

As further information emerged it became increasingly apparent that there was concerted movement away from approaches to promote equality. A core safeguard of the Belfast/Good Friday Agreement was the aforementioned statutory equality duty introduced under section 75 and schedule 9 of the Northern Ireland Act 1998.²⁴ However, the DSD had bypassed application of the statutory equality duty in relation to policy decisions on strategic housing policy. In October 2013 CAJ petitioned the Equality Commission to use its enforcement powers to launch a formal investigation into DSD over housing policy.²⁵ Consequently the Equality Commission launched an investigation in April 2014 and issued an Investigations Report in November 2015.²⁶

The main finding of the Investigation Report was that DSD had failed to comply with duties to assess the impacts on equality of the *'Facing the Future'* strategic policy for housing reform and had therefore breached its equality scheme.

The investigation also found DSD failed to comply with duties to assess the impacts on equality of a new-build housing regeneration programme entitled "Building Successful Communities" or "housing led regeneration." Instead the project had gone ahead in six areas designated as 'pilots' without equality proofing. Rather than sticking to indicators of objective housing need the 'criteria' used to select the pilot areas included areas with "significant levels of empty properties" that "have experienced a decline in housing demand" and were in "proximity to places where there is housing need." This resulted in three mainly Protestant and three mainly Catholic areas being selected. The investigation, in finding a further breach of the equality scheme, concluded that:

²³ Participation and the Practice of Rights *'Equality Can't Wait'* 2013, chapter 7.

²⁴ Under this Public authorities are to adopt Equality Schemes, containing binding commitments to conduct equality assessments on new or changed policies. If the assessments (undertaken through a two stage process of 'screening' and 'Equality Impact Assessment') evidence detrimental ('adverse') impacts of policies the public authority is obliged to instead consider 'alternative policies' or 'mitigating measures'. The duty is designed to prevent decisions being taken which cause or perpetuate inequality. This includes preventing past practices such as Gerrymandering or broader housing discrimination through not providing housing on the basis of objective need.

²⁵ CAJ's request to ECNI for Para 11 Investigation into Department of Social Development (DSD) Strategic Housing Policy, October 2013

²⁶ Equality Commission for Northern Ireland. (2015). *Investigation Report under Schedule 9 of the Northern Ireland Act 1998. Department for Social Development: Housing Policy Proposals*

There is no evidence that any [equality] screening or impact assessment took place with respect to the policy decision of selecting the areas that should be part of the pilot programme (paragraph 3.30)

Furthermore the investigation report cites a DSD Narrative Report which reveals that the decisions on area selection were intentionally taken on the basis of community ‘parity’ and not equality/objective need, and hence diverted resources from those most in housing need.²⁷

The investigation did concede that DSD had conducted equality screening exercises on other policies which formed part of the ‘Facing the Future’ action plan including the Social Housing Reform Programme. However it noted that these equality screening exercises were only initiated *after* the Equality Commission launched its investigation.²⁸

The Committee may wish to ask the UK how it will ensure that high level strategic housing policies are equality impact assessed, based on objective need and press for an update as to what concrete steps are to be taken to address the Committee’s previous recommendation in relation to north Belfast.

Women’s Inequality in Northern Ireland (Art. 3, 10)

Gender Equality Strategy, Northern Ireland

The Gender Equality Strategy for Northern Ireland has been in the process of being re-drafted for over two years. Significant parts of the previous strategy, which ran from 2006, were not delivered, and cannot be said to have fully addressed issues such as the gender pay gap and occupational segregation on which the Committee specifically seeks information. In particular in light of the impacts of social security and austerity cuts which will further impact on women the most it is imperative that a strategy is brought forward immediately.

The Committee may want to ask again that the UK ensure that a robust gender equality strategy is put in place in Northern Ireland with action plans and monitoring measures that include the Covenant rights of women.

The Gender Pay Gap

In Northern Ireland the public sector gender pay gap is actually -4.6%, indicating that the median female public sector wage is higher than that of males. This compares to a +20% gender pay gap within the private sector.²⁹ This clearly demonstrates the serious risks

²⁷ The DSD Narrative Report states “To ensure equality of opportunity [sic] and good relations it was felt that a community balance should be sought across pilot areas” (at para 2.6 of Investigation Report).

²⁸ Paragraph 3.14 of Investigation Report.

²⁹ MacFlynn, Paul. (2015). ‘Public Sector Employment in Northern Ireland’ NERI Research in Brief March 2015

that the large scale transfer of jobs from the public to the private sectors, as envisaged under the Stormont House Agreement, could have a massive impact on the gender pay gap in Northern Ireland and will adversely impact on women. Whilst there is no guarantee any private sector jobs will be created the Voluntary Exit Scheme to reduce the size of the public sector has been taken forward, to date there has been no equality impact assessment of the scheme.

The Committee may want to ask what measures the UK are taking to ensure that an equality impact assessment is carried out on the voluntary exit scheme to ensure there is no widening of the gender pay gap in Northern Ireland.

Childcare

The implementation of Universal Credit envisages childcare infrastructure being in place to support parents to find work. Unfortunately Northern Ireland lacks such an infrastructure with limited access to affordable, appropriate and accessible childcare across Northern Ireland.³⁰ The Equality Commission for Northern Ireland states in their childcare research report:

Among the factors that discourage mothers to look for paid work, poor access to childcare is a crucial factor; childcare should be both affordable and geographically accessible to facilitate employment. If a significant portion of female-generated income, especially in the short term, is being spent on childcare, then work may be financially unviable.³¹

Research conducted by Save the Children on Universal Credit implications across the UK shows many low income mothers are considering leaving work because they can no longer afford childcare.³²

The Committee may wish to ask the UK how it will adopt measures to make childcare services available that are affordable, accessible and appropriate in Northern Ireland.

Rights protections in the Northern Ireland peace agreements (Art. 1, 2)

Bill of Rights for Northern Ireland

The Bill of Rights for Northern Ireland committed to under the Belfast/Good Friday Agreement is to incorporate further rights in addition to those within the ECHR into Northern Ireland law through legislation in the UK Parliament.

³⁰The Equality Coalition response to the Northern Ireland Childcare Strategy Consultation in November 2015 goes into more depth on childcare issues across Northern Ireland

³¹ Equality Commission for Northern Ireland. (2013). Maximising the Economic Participation of those with childcare responsibilities, usually women

³² Whitham, G. (2012) 'Ending Child Poverty: Ensuring Universal Credit supports working mums', Save the Children.

In accordance with its mandate under the Agreement the Northern Ireland Human Rights Commission (an 'A' status NHRI) delivered its final advice to the UK government on the 10 December 2008, advising inclusion of rights protected under the Covenant.

The following year the Committee urged the UK to enact the Northern Ireland Bill of Rights inclusive of economic and social rights 'without delay'.³³ The UK government has since that time delayed legislating on the Bill of Rights and to facilitate this delay has introduced a pre-condition, incompatible with the commitment in the Agreement, of unionist-nationalist consensus as to its content before legislating.

The Committee may wish to impress upon the UK that state parties protection of Covenant rights cannot be subordinated to preconditions of 'community consensus' and urge the implementation of the Northern Ireland Bill of Rights.

Proposed repeal of the Human Rights Act 1998

The 1998 Belfast/Good Friday Agreement, itself a (UK-Ireland) bilateral treaty approved by referendum, provides that the UK must incorporate the ECHR into Northern Ireland law.³⁴ This commitment was legislated for in Northern Ireland (as well as for Great Britain) under the Human Rights Act 1998. It is a matter of serious concern that the current UK government wishes to repeal the Human Rights Act and replace it with a 'British Bill of Rights' that would not fully incorporate the ECHR. In addition to the general regression in rights protection such a move would also constitute a flagrant breach of the Belfast/Good Friday Agreement.

The Committee may want to ask the UK how it will comply with the Belfast/Good Friday Agreement if it repeals the Human Rights Act 1998.

Irish language legislation

In 2009 the Committee urged the UK Parliament or devolved administration to implement the treaty based commitment to adopt an Irish Language Act it entered into in the bilateral (UK-Ireland) St Andrews Agreement 2006.³⁵ On three occasions since Council of Europe treaty bodies have reiterated this call.

The Council of Europe Committee of Experts noted that the need for consensus between unionist and nationalist parties to legislate in the Northern Ireland Assembly meant it was unlikely the bill could be passed there, and that the Act could instead be passed in

³³ [ICESCR Concluding Observations on the UK](#), paragraph 20.

³⁴ Treaty Series No. 50 (2000) Cm 4705; the Agreement consisted of the British-Irish Agreement between the two sovereign states and the Multi-Party Agreement between participant political parties. The British-Irish Agreement (Article 2) affirms the solemn commitment of the UK government to support and implement the sections of the Multi-Party Agreement, which correspond to it. Paragraph 2 of the Rights, Safeguards and Equality of Opportunity section of this Agreement states: *'The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency.'*

³⁵ [ICESCR Concluding Observations on the UK](#), paragraph 37.

the UK Parliament given its parallel legislative competence.³⁶ In May 2015 the Department of Culture, Arts and Leisure formally consulted on the content of an Irish Language Act, however the introduction of an Act was subsequently blocked by other parties in the Northern Ireland Executive. The Act can therefore not proceed through the devolved administration but can proceed through the UK Parliament. However there is no commitment to its introduction in the UK Parliament, despite the clear treaty-based commitments and the Committee's recommendation.

The Committee may wish to ask the UK for a commitment to introduce the Act in the UK Parliament.

Abortion legislation in Northern Ireland (Art. 12)

The Committee asks for details of any progress being made to amend abortion legislation in Northern Ireland in the list of issues November 2015.³⁷ Previously in 2009 the Committee urged the UK to amend abortion law in Northern Ireland to provide for terminations in cases of rape, incest or foetal abnormality.³⁸ Following a consultation in April 2015 the Department of Justice Northern Ireland indicated it would proceed to take forward legislation to allow abortion in the circumstances of fatal foetal abnormality but not in cases of rape or incest.³⁹ 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 ECHR for not providing for terminations in the cases of fatal abnormality and sexual crime.⁴⁰ However no legislation was introduced to this end and in February 2016 attempts to amend justice legislation in the Northern Ireland Assembly to provide for abortion in such circumstances were defeated.⁴¹

A young woman in April 2016 was given a three month jail sentence, suspended for 12 months, after admitting two offences.⁴² The young woman procured abortion pills because she could not afford to travel to England for an abortion. The offences she was prosecuted for are contained in 19 century legislation – the 1861 Offences Against the Person Act - which have been repealed elsewhere in the UK but continue to be in force in Northern Ireland. Section 58 of the legislation provides that any woman who in anyway procures an abortion can face a sentence of 'penal servitude for life'.

³⁶ Council of Europe, (UK Third Monitoring Report) Report of the Committee of Experts on the Charter ECRML 2010(4), paragraph 15; Council of Europe, (UK Third Opinion on the UK) Advisory Committee on the Framework Convention for National Minorities 2011(006).

³⁷ ICESCR list of issues in relations to the UK and NI. November 2015. Paragraph 28.

³⁸ ICESCR Concluding Observations on the UK, paragraph 25.

³⁹ Justice Minister ['David Ford has said there is a substantial body of support to make limited changes to the law on abortion'](#). Thursday, 16 April 2015

⁴⁰ Northern Ireland Human Rights Commission, Factsheet on the Termination of Pregnancy (2015)

⁴¹ Further information on the debate can be found in the official Hansard record, Wednesday 10 February 2016, Volume 112, No 5

⁴² *Woman who bought drugs online to terminate pregnancy given suspended sentence*, 4 April 2016, BBC News Northern Ireland

Section 59 of the Act provides that any other person (including a medical professional) who assists a woman to ‘procure a miscarriage’ whether through pills or another method can be sentenced to ‘penal servitude’ for an unspecified period. In the Committee’s General Comment No 22 (2016) on the right to reproductive health (article 12 of the covenant) paragraph 40 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, while confidentiality of the health data should be maintained.

States must reform laws that impede the exercise of the right to sexual and reproductive health. Examples include laws criminalizing abortion, HIV non-disclosure, exposure and transmission, consensual sexual activities between adults or transgender identity or expression.’⁴³

The Committee may wish to state that sections 58 and 59 of the Offences Against the Person Act 1861 are incompatible with the Covenant and call for their repeal, and urge the UK to legislate in line with its previous recommendations.

**Committee on the Administration of Justice
April 2016**

⁴³ See, e.g., CESCR, Concluding Observations: Chile, para. 53, UN Doc. E/C.12/1/Add.105 (2004); CEDAW, General Recommendation No. 14, para. 24 & 31(c); Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Doc. A/66/254 (2011); Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, UN Doc. A/HRC/14/20 (2010).