

CAJ's submission no. S369

**Submission to the UNIVERSAL PERIODIC REVIEW
in relation to the United Kingdom 2012**

November 2011

What is the CAJ?

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. 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. 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 providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however 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, Barrow Cadbury Trust, Joseph Rowntree Charitable Trust and the Oak 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.

Submission to the Universal Periodic Review of the UK 2012

1. Northern Ireland is a post-conflict society that remains deeply divided. The 1998 Belfast/Good Friday Agreement provides the framework for the main elements of the peace settlement. This includes a framework for the sharing of executive power between the two main communities, and a number of institutions and powers designed to protect human rights. The 1998 Agreement is an international treaty between the UK and Ireland; and was also endorsed by referendum in both Northern Ireland and the Republic of Ireland.¹ A number of subsequent UK-Ireland bilateral Agreements implement and further the peace settlement.²

2. CAJ is concerned that despite being enshrined in an international peace treaty there are still a number of commitments made as part of the settlement that have still yet not been implemented, and others which were taken forward which have subsequently been undermined. This submission will therefore focus on the UK's peace settlement commitments which remain unimplemented or threatened, in summary:
 - legislating for a Bill of Rights for Northern Ireland; [paragraphs 3-5 below]
 - threats to the incorporation of the European Convention on Human Rights (ECHR) in Northern Ireland law; [6]
 - measures to facilitate women's role in peace building, in particular the non-application of UNSC Resolution 1325 to Northern Ireland; [7]
 - holding an independent inquiry into the murder of human rights defender Pat Finucane; [8-9]
 - the undermining of the independence of the new police complaints ombudsman; [10-11]
 - the strengthening of equality and anti-discrimination legislation in Northern Ireland; [12]
 - the failure to discontinue a separate criminal justice regime consisting of counter-terrorism 'emergency' legislation and specialist courts; [13]

The Working Group may wish to urge the UK to implement its outstanding commitments relating to the peace-process and protect elements of the settlement which are at risk.

¹ The Agreement consisted of the British-Irish Agreement between the two sovereign states and the Multi-Party Agreement between participant political parties. Both were done in Belfast on 10 April 1998. 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.

² Weston Park Agreement 2001, the Joint Declaration 2003 and St Andrew's Agreement 2006.

Northern Ireland Bill of Rights

3. The 1998 Agreement provided for the UK Parliament to legislate for a Bill of Rights for Northern Ireland containing rights which were in addition to the ECHR, reflected the particular circumstances of Northern Ireland and drew on international instruments and experience. In a further UK-Ireland bilateral agreement in 2003 the UK further explicitly committed to introducing legislation in the UK Parliament for the Bill of Rights for Northern Ireland once the National Human Rights Institution (NHRI) had delivered advice as to its content.³ After a long intensive consultation the NHRI submitted its advice to the UK Government in December 2008. The following year, in relation to this advice, the Committee on Economic, Social and Cultural Rights (CESCR) stated:

The Committee notes the draft Bill of Rights for Northern Ireland, which includes economic, social and cultural rights which are justiciable and calls for its enactment without delay.⁴

4. Whilst in 2009 the UK government later issued a consultation document⁵ it has not subsequently introduced nor taken steps towards introducing legislation for a Bill of Rights for Northern Ireland. In 2011 the Committee for the Elimination of Racial Discrimination (CERD) expressed its concerns that despite the provisions of the 1998 Agreement the Bill of Rights had not been taken forward and recommended that the UK take 'immediate steps' to ensure a Northern Ireland Bill of Rights was adopted.⁶
5. The Northern Ireland process is a separate commitment to more recent initiatives by the UK government in relation to a potential UK Bill of Rights.⁷

The Working Group may wish to urge the UK to implement its commitment to legislate for a Bill of Rights for Northern Ireland.

Incorporation of the ECHR into Northern Ireland law

6. In the 1998 Agreement the UK committed itself to the incorporation of the ECHR into Northern Ireland law. This included provisions for direct access to

³ In 2003 the UK-Ireland Joint Declaration stated that once the Northern Ireland Human Rights Commission delivered its advice on the content of a Northern Ireland Bill of Rights the British Government would bring forward legislation in the UK Parliament (Westminster) where required to give effect to rights supplementary to the ECHR to reflect the particular circumstances of Northern Ireland, see Joint Declaration by the British and Irish Governments, April 2003, Annex 3, paragraph 2.

⁴ CESCR (Concluding observations on the UK) 12 June 2009, UN DocE/C.12/GBR/CO/5, at para10.

⁵ Northern Ireland Office 'A Bill of Rights for Northern Ireland: Next Steps' 2009

⁶ CERD (Concluding observations on the UK) 14 September 2011, UN Doc CERD/C/GBR/CO/18.20, at para 19.

⁷ Further to discussions on a potential 'British Bill of Rights and Duties' by the previous UK government, the present Coalition government has set up a 'Commission on a Bill of Rights' to advise on a UK Bill of Rights, (see '*The Coalition: our programme for government*', p.11;)

<http://www.justice.gov.uk/about/cbr/index.htm> this process has a very different genesis from the Northern Ireland process motivated by differing political agendas around constitution-building; making rights more British; linking of rights to responsibilities, and even proposed weakening of the ECHR.

the courts, remedies for violations, powers to strike down legislation, and prohibition on infringements by public authorities and the legislature.⁸ The UK then took these commitments forward through the Human Rights Act 1998 and Northern Ireland Act 1998. CAJ is concerned that the present UK discussions relating to a potential British or UK Bill of Rights have included advocating retrogression from the ECHR.⁹

The Working Group may wish to seek assurances there will be no retrogression from the incorporation of the ECHR.

The right of women to full and equal political participation in a post-conflict society

7. The parties to the 1998 Agreement affirmed, in post-conflict context, the right of women to full and equal political participation.¹⁰ However, whilst in this context it would be important to do so, to date the UK has adopted a position of not applying the provisions of the subsequent UN Security Council Resolution 1325 (on women peace and security) to the conflict in Northern Ireland.¹¹ CAJ does not believe it is possible for the UK to sustain a view that UNSCR 1325, adopted unanimously by the Security Council (including the UK) with reference to all UN Member States, either only applies to the global south, or that Northern Ireland is not a post-conflict society to which the resolution should apply. CAJ sees clear relevance in the application of UNSCR 1325 to Northern Ireland. This is a view also put forward by the UN Committee on the Elimination of all Forms of Discrimination against Women (CEDAW) who, 'in view of its particular relevance to Northern Ireland' stated:

The Committee also calls for the full implementation of Security Council resolution 1325 (2000) in Northern Ireland.¹²

The Working Group may wish to ask the UK to fully implement UNSCR 1325 to Northern Ireland.

⁸ 1998 Agreement: Rights, safeguards and equality of opportunity, paragraph 2; strand 1 5(b-c), 11, 26(a).

⁹ Whilst the terms of reference of the present (UK) Commission on a Bill of Rights, reiterate commitments to the ECHR, this does not per se guarantee there is no advocacy of retrogression from the manner in which it is presently given further effect in domestic law through the Human Rights Act 1998 and Northern Ireland Act 1998 (and separate devolution statutes in Scotland and Wales).

¹⁰ 1998 Agreement: Rights, safeguards and equality of opportunity, paragraph 1.

¹¹ The UK has adopted a position of not applying UNSCR 1325 to Northern Ireland. Despite this the UK has reported to the UN that "[N]evertheless, some aspects of UNSCR 1325, such as women's participation in peace building and political processes, are relevant to all states. Also, the UK Government will continue to work towards increasing the representation of women in Northern Ireland in public and political life" see CEDAW, UK 7th Periodic Report) July 2011, at para 301. However the UK gave no indication of which particular initiatives the UK regards as taking forward.

¹² CEDAW (Concluding Observations on the UK) 10 July 2008, UN Doc CEDAW/C/UK/CO/6, at para 285.

Independent inquiry into the murder of human rights defender Pat Finucane

8. In 2008 the Human Rights Committee, examining UK compliance with the ICCPR, stated that:

The Committee remains concerned that, a considerable time after murders (including of human rights defenders) in Northern Ireland have occurred, several inquiries into these murders have still not been established or concluded, and that those responsible for these deaths have not yet been prosecuted. Even where inquiries have been established, the Committee is concerned that instead of being under the control of an independent judge, several of these inquiries are conducted under the Inquiries Act 2005 which allows the government minister who established an inquiry to control important aspects of that inquiry. ([ICCPR] art. 6)

The State party should conduct, as a matter of particular urgency given the passage of time, independent and impartial inquiries in order to ensure a full, transparent and credible account of the circumstances surrounding violations of the right to life in Northern Ireland.¹³

9. Under the 2001 Weston Park Agreement the UK agreed to hold independent public inquiries into a number of high-profile conflict killings, if such inquiries were recommended by an independent international judge examining their cases. Mr Justice Cory subsequently recommended inquiries in most of the cases. One of these recommendations related to the 1989 murder of leading human rights lawyer Pat Finucane, which had been the subject of a successful case to the European Court of Human Rights.¹⁴ After the Cory recommendations the UK introduced the Inquiries Act 2005 which, replacing all previous legal bases for an inquiry, provided for unprecedented interference by a government minister in the inquiry process. Whilst inquiries into other killings have taken place the UK has not implemented its commitment for an independent inquiry into the death of Pat Finucane. In 2011 the UK, despite having indicated an inquiry would commence with undertakings that ministerial powers would not be exercised, instead retracted the commitments indicating a 'review' of the case would take place rather than an independent inquiry.

The Working Group may wish to ask the UK to implement its commitment for an independent inquiry into the murder of Pat Finucane.

¹³ Human Rights Committee (Concluding Observations on the UK) CCPR/C/GBR/CO/6/CRP.1 21 July 2008, at para 9.

¹⁴ *Finucane v the United Kingdom*, [2003] ECHR 29178/95.

Undermining of independent Police Complaints Mechanism

10. Reform of policing, including independent accountability, was a significant outworking of the 1998 Agreement. This led to the establishment of the Police Ombudsman for Northern Ireland as an independent body to investigate complaints against the police. The requirement of investigations independent from the security forces is particularly relevant to conflict-related deaths where there is potential state involvement.
11. In 2011 three reports into the Police Ombudsman from three distinctly different institutions – CAJ, the Northern Ireland Justice ministry and official Criminal Justice Inspection, identified political interference in the Ombudsman’s Office.¹⁵ The Criminal Justice Inspection further determined: the Police Ombudsman’s Office should be suspended from conducting historic investigations due to a ‘lowering of independence’; reports into historic cases were altered or rewritten to exclude criticism of the police with no explanation; senior officials in the Office requested to be disassociated from reports into historic matters after original findings were dramatically altered without reason; staff investigating some of the worst atrocities of the conflict believe police have acted as ‘gatekeepers’ to withhold key intelligence from them; and, major ‘inconsistencies’ existed in the Police Ombudsman’s investigations into a number of high profile atrocities. In September 2011 CERD took note of the reports of the current lack of independence of the Police Ombudsman and urged the UK to ensure the Office is able to undertake effective investigations.¹⁶

The Working Group may wish to ask the UK what steps it is taking to restore independence to the Police Ombudsman’s Office.

Equality and non-discrimination

12. Strengthening protections against discrimination and duties to promote equality were important tenets of the peace settlement, however there remain significant concerns. Non-discrimination and equality legislation is piecemeal and complex,¹⁷ as well as inconsistent and incomplete.¹⁸ Despite over ten years’ work on a Single Equality Bill, commitments in the bilateral St Andrew’s

¹⁵ ‘Human Rights and Dealing with Historic Cases- A Review of the Office of the Police Ombudsman for Northern Ireland’ (CAJ, June 2011); McCusker, Tony ‘Police Ombudsman Investigation Report’ (Department of Justice Northern Ireland, June 2011); ‘An inspection into the independence of the Office of the Police Ombudsman for Northern Ireland’, (Criminal Justice Inspection Northern Ireland, September 2011).

¹⁶ CERD (Concluding Observations on the UK) UN Doc CERD/C/GBR/CO/18-20 1 September 2011, at para 15.

¹⁷ There are over 80 pieces of equality and non-discrimination legislation in Northern Ireland.

¹⁸ For example, different levels of protection apply by reference to colour and nationality, as compared to race, ethnic and national origin.

Agreement 2006 and the passing of the Equality Act 2010 in Great Britain, no work is currently taking place to introduce harmonising legislation in Northern Ireland. In light of this in CERD have recently recommended that the UK take immediate steps to ensure that a single equality law is adopted in Northern Ireland (or the Equality Act 2010 is extended to the jurisdiction).¹⁹ In addition treaty bodies have expressed concerns a duty on public authorities to promote equality provided for under the 1998 Agreement is not being implemented as effectively as it could be.²⁰

The Working Group may wish to ask the UK to strengthen equality and non-discrimination protections in Northern Ireland.

The continued use of ‘emergency’ legislation and measures

13. The 1998 Agreement contained considerable commitments to a ‘normalisation’ of security arrangements, including subject to circumstances, to ‘the removal of emergency powers in Northern Ireland’.²¹ However in 2011 there is continued application of both specific and UK-wide emergency legislation to Northern Ireland despite no emergency existing. Contrary to the position put forward in the UK’s 2008 response to the UPR developments in Northern Ireland do not ‘demonstrate the effectiveness of the UK Government’s approach to terrorism’.²² Our 2008 submission to the UPR on the use of emergency legislation in Northern Ireland highlighted how human rights abuses can sustain and prolong conflict, alienate communities and undermine the rule of law.²³
14. The Justice and Security Act (Northern Ireland) 2007 (JSA) provides for a range of emergency type powers in Northern Ireland. This includes provision for special non-jury trials in Northern Ireland, a provision which has been recently extended for a further two years.²⁴ The JSA also provides the police and military with extraordinary stop, question and search powers, which can be exercised without individual reasonable suspicion (and hence in a potentially arbitrary and/or discriminatory manner). These powers have

¹⁹ CERD (Concluding Observations on the UK), UN Doc CERD/C/GBR/CO/18-20 1 September 2011, at para 19.

²⁰ See CESCR (Concluding Observations on the UK), UN Doc E/C.12/GBR/CO/5, 12 June 2009, at para 31; Committee on the Elimination of Discrimination Against Women (Concluding Observations on the UK), UN Doc CEDAW/C/UK/CO/6, 10 July 2008, at para 264. The statutory duty to promote equality of opportunity was domesticated under section 75 of the Northern Ireland Act 1998.

²¹ Security, paragraph 2(iii).

²² Paragraph 104.

²³ War on Terror: lessons from Northern Ireland, CAJ, 2008 (www.icj.org/IMG/CAJ_summary.pdf)

²⁴ CAJ opposed this extension. The UK’s 2008 response to the UPR states that ‘ongoing threats to the administration of justice posed by paramilitary intimidation of jurors’ are a justification for such measures (at para 104). CAJ has stated that there is no substantive body of evidence within the public domain to suggest that there is a serious problem of juror intimidation in Northern Ireland that would support the case for non-jury trials.

continued to be exercised despite use of similar UK-wide 'Section 44' (Terrorism Act 2000) powers having been discontinued following a European Court of Human Rights ruling of incompatibility with the ECHR.²⁵

The working group may wish to ask the UK whether it intends to repeal the emergency type powers in the Justice and Security Act (Northern Ireland) 2007 and UK-wide counter terrorism legislation.

²⁵ *Gillan and another v United Kingdom* [2010] ECHR 4158/05.