

Senator George Mitchell
International Body
12th Floor
Windsor House
6-12 Bedford Street
Belfast

19 December 1995

Dear Senator Mitchell

We are very grateful for the invitation to contribute to the International Body. Please find attached a submission which we very much hope is of some assistance to you and your colleagues in the important work which you are undertaking. We have endeavoured to keep the submission as short and to the point as possible. We are in a position to provide supporting documentation on the various issues which we raise and have at this point enclosed some documents as appendices which we feel may be of particular interest. Please do not hesitate to contact us if you have any questions on the points which we raise or if you think that we can be of any further assistance. We would welcome the opportunity to meet with you and your colleagues to further elaborate on the views expressed in our submission or on any other matters which you think might be of assistance to you.

We respectfully suggest that it might be helpful if the International Body were to consider the following questions and direct these to the various parties you encounter in the course of your work.

Why do people feel the need to hold arms and why do they feel the need for others to give them up?

What are the circumstances in which decommissioning is seen as possible?

What can we learn from international experience in relation to conflict mediation, removing arms from a conflict and about the factors necessary to enable people to engage in negotiations?

We look forward to hearing from you in the future and wish you success in your deliberations.

Yours sincerely

Christine Bell
Chairperson

Submission from the Committee on the Administration of Justice (CAJ) to the International Body

The work of 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 opposed to the use of political violence. Its membership consists of both Protestants and Catholics and includes lawyers, academics, community workers, unemployed people and students.

The Committee monitors the operation of the legal system in Northern Ireland and seeks to ensure that the government complies with its responsibilities in international human rights law. The Committee is strongly of the view that international intervention in relation to the human rights situation in Northern Ireland has been and continues to be extremely important in pressing for change. CAJ works closely with other national and international human rights groups such as Amnesty International, the Lawyers Committee for Human Rights and Human Rights Watch. It makes regular submissions to a number of United Nations and European bodies established to protect human rights. The Committee has received several international human rights prizes including the Reebok Human Rights Award.

CAJ's activities include: publication of information; conducting research; holding conferences; campaigning locally, nationally and internationally; individual casework and legal advice. Its areas of interest are extensive and include prisons, policing, emergency laws, the criminal justice system, the use of lethal force, children's rights, gender equality, racism, religious discrimination and advocacy for a Bill of Rights.

Introduction

Violations of human rights are wrong in themselves but they also feed and fuel conflict. Human rights and their abuse have been at the very heart of the conflict in Northern Ireland. They must therefore be at the heart of the peace process. The manner in which human rights are protected and safeguarded in any political settlement will largely determine the stability and nature of any peace.

Throughout the history of Northern Ireland the law has failed to guarantee equal and adequate protection of the rights and liberties of every person (see e.g. Farrell 1976, Boyle, Hadden & Hillyard 1983, Jennings 1990, Dickson 1992). Any settlement of the conflict must lead to a society where no one is above the law, where everyone is equal under the law, where the law itself is clear, fair and complies with international human rights standards and where an independent judiciary enforces that law. In short, any political settlement needs to establish the internationally recognised principle of the rule of law. An analysis of the past provides clear evidence that the government has failed, despite its assertions, to operate within the rule of law.

The rule of law and your Commission

It is within this context that we are writing to you regarding the work of your Commission. Given CAJ's unequivocal opposition to the use of violence for political ends in Northern Ireland we believe it is an imperative that all guns be removed from our society. In our view the practical attainment of such a goal however is inextricably linked to establishing a society which operates within the rule of law - a society where everyone, regardless of their background or views, feels secure.¹ This sense of security in turn depends upon a belief that everyone's rights will be protected, that everyone will be treated fairly and that those who are meant to enforce the law do so equitably and are held accountable when they themselves break the law or fail to apply it even-handedly.

As a civil liberties organisation concerned to ensure respect for international human rights law our remit is confined to ensuring that the state upholds its commitments to respect rights. As a result, our submission focuses on the state's responsibilities to ensure security for all and the effective implementation of the rule of law.

The right to life

The primary responsibility for any state must be to preserve life. The right to life is a non-derogable right which the state is required to protect as a result of its international legal obligations.² In Northern Ireland there is a disturbing pattern of evidence which suggests that the state has failed to do this. Since the inception of the conflict some 3300 people have been killed, of these 357 people have been killed by the police or army (Scott 1994). More than half of these have been uninvolved civilians and many others have been killed in circumstances where they could have been arrested (Ni Aolain 1996). Furthermore, a significant number of killings by members of the security forces suggest a practice, if not a policy, of extra-judicial executions (Urban 1992). Amnesty International has observed that **"some of the killings by the security forces may have resulted from a deliberate policy at some official level to eliminate, or permit elimination of, rather than to arrest individuals whom they identified as members of armed opposition groups."** (Amnesty 1988)

The state's response to these problems has been completely ineffective and indeed the state has gone to considerable lengths to misrepresent the facts and to prevent the truth from coming to light (Stalker 1988, Miller 1994) For example, the report by the senior English police officer, John Stalker, into 6 killings in 1982 has never been published and in spite of evidence of wrong-doing on the part of a number of police officers, a decision was taken not to prosecute them in the "public interest". Similarly the more recent report by another senior police officer from England, John Stevens, into the problem of collusion has not been published.

The problem of collusion between members of the security forces and loyalist paramilitaries raises further serious questions for those interested in ensuring the rule of law, and is exemplified by the case of Brian Nelson. Nelson was a British

¹ Article 3 of the Universal Declaration of Human Rights provides that "everyone is entitled to life, liberty and security of person."

² Article 2 European Convention on Human Rights.

intelligence agent working inside a loyalist paramilitary group and was involved in a number of killings including that of defence lawyer Pat Finucane (Lawyers Committee 1993, Amnesty 1994). There is evidence which shows that in a number of cases, including that of the killing of Mr. Finucane in 1989, Nelson informed his intelligence handlers of the danger to lives but they took no action.³ In the case of Patrick Finucane no one has been prosecuted for his killing. Members of his family who witnessed his killing have still not been interviewed by the police.

The record of prosecutions and convictions in relation to deaths caused by members of the security forces is shocking. In the history of the conflict only six members of the security forces have been convicted in the courts in relation to lethal force incidents and of these only 4 have been for murder. Of these four, two have had their term of imprisonment dramatically reduced by the executive arm of government in highly controversial circumstances. The remaining two have appealed their convictions and judgement is awaited.

The lack of effective mechanisms to investigate lethal force incidents and to hold those responsible for them to account means that the security forces remain able to use lethal force with virtual impunity. In effect members of the security forces are largely above the law and are not treated in the same way as everyone else. This lack of state accountability leads to a clear perception to a lack of security and state protection for all members of society in Northern Ireland.

In our view the United Kingdom government is in breach of the United Nations Basic Principles on the Use of Force by Law Enforcement Officials. Principle 7 states: **"Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law."** The United Nations Principles on the Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Execution specifically prohibit extra-judicial executions and make it clear that exceptional circumstances such as "war, internal political stability or any other public emergency" in no way justify them.

In February 1994, Amnesty International concluded that it **"has not been convinced that the Government has taken adequate steps to halt collusion, to investigate thoroughly and make known the full truth about political killings of suspected Government opponents, to bring to justice the perpetrators and dismantle "pro-state" organisations dedicated to political violence, or otherwise deter such killings."** (Amnesty 1994)

As recently as July of 1995 the United Nations Human Rights Committee noted that the systems for investigating lethal force incidents were inadequate and that **"they lack sufficient credibility"**. The UNHRC further recommended that **"specific efforts be made to enhance in Northern Ireland, confidence in the administration of justice by resolving outstanding cases and by putting in place transparently fair procedures for independent investigation of complaints."** (UNHRC 1995)

Plastic Bullets

A related concern is the continued use of plastic bullets by the security forces in Northern Ireland. We understand from the police that since the cease-fires some

³ BBC Panorama Programme "The Dirty War" broadcast June 1992.

279 plastic bullets have been fired.⁴ Fortunately these 279 bullets have not led to any deaths but several people have been seriously injured by them. Since their introduction to Northern Ireland some 14 people (including 7 children) have been killed by plastic bullets (CAJ 1990). In eleven out of the 14 deaths army and police claims that the victim was rioting have been disputed by the witnesses or by the judge or coroner conducting an inquiry into these incidents (CAJ 1990). No police officer or soldier has been effectively held accountable in relation to these deaths. Indeed, in the case of Nora McCabe, where there was incontrovertible video evidence of police wrongdoing, no action was taken against the officer involved and he was later promoted.

Plastic bullets were introduced to Northern Ireland as a supposedly non-lethal weapon. The number of deaths ensuing from their use reveal that this is not the case. Their use appears to contravene Principle 3 of the U.N. Basic Principles on the Use of Force by Law Enforcement Officials. In November of this year the United Nations Committee Against Torture expressed concern to the United Kingdom government about the use of plastic bullets in Northern Ireland. The use of these lethal weapons, which are not deployed in Britain, was in our opinion, never justified. However we are particularly concerned that these dangerous weapons continue to be used since the cease-fires.

Policing

Both of the issues above concern the operation of the security forces in general i.e. the army and the police, and the state's responsibility to uphold the rule of law. In the ongoing peace process, the establishment of an effective police service is of central importance to the development of a demilitarised society in which everyone feels secure and there is respect for the rule of law. The United Nations Code of Conduct for Law Enforcement Officials stresses the importance of police services being, accountable, representative of and responsive to the community they serve (UN 1979). The Declaration on the Police passed by the Parliamentary Assembly of the Council of Europe also provides some helpful guidance on the necessary standards for policing (Council of Europe 1992). The RUC does not, in our view, and the opinion of many other internationally respected human rights organisations such as Amnesty International and the Lawyers Committee for Human Rights, meet these criteria of minimum international standards for policing.

The history of the police force in Northern Ireland is littered with example after example of its failure to respect the rule of law (see e.g. Walsh 1988, Ryder 1989, Campbell 1994, Weitzer 1995). From the death in 1969 of Samuel Devenney after being assaulted by the police to much more recent concerns about collusion, the use of lethal force, and the ill-treatment of detainees, the authorities have consistently failed to hold police officers accountable for wrongdoing. For example the official statistics show that no complaint of assault during detention under emergency legislation has been substantiated over the last six years (ICPC Annual Report 1998-94). This is in spite of the substantial damages paid to detainees as a result of civil actions arising out of their treatment during detention.

⁴ Letter from Chief Constable to Pat Finucane Centre. 22nd August 1995. Reproduced in One Day in August. Pat Finucane Centre : Derry.

The government has been condemned by the United Nations Committee Against Torture and by the European Committee for the Prevention of Torture (ECPT), the European Court of Human Rights and an extensive range of non-governmental organisations for its failure to adequately protect detainees held under emergency legislation from abuse. The ECPT report on its 1993 visit to Northern Ireland stated that it had been **"led to conclude that persons arrested under the PTA run a significant risk of psychological forms of ill-treatment during their detention at the holding centres and that on occasion, resort may be had by detective officers to forms of physical ill-treatment."** (ECPT 1994)

Even in the wake of the cease-fires, albeit in decreasing numbers, we continue to receive complaints from detainees about psychological and physical abuse during detention under emergency legislation. Earlier this year the United Nations Human Rights Committee and the United Nations Committee Against Torture both called for the closure of the Castlereagh Detention Centre and the repeal of emergency legislation (copies of their findings are attached for your information). The government has refused to act despite this strong international censure and maintains its derogation from the International Covenant on Civil and Political Rights and the European Convention on Human Rights. Indeed in the parliamentary debate on the Human Rights Committee report on 26th October 1995 the government indicated cavalier contempt for the findings of the United Nations Human Rights Committee. If the government continues to flagrantly disregard its responsibilities under its binding treaty obligations then the establishment of the rule of law and a lasting peace will elude us.

Unless policing in Northern Ireland is representative of the community which it serves it is unlikely that it will win the confidence of all sections of the community. The current police force is almost exclusively male, white and drawn from the Protestant community (Mapstone 1994). Significant sections of the community have little or no confidence in it and many question its very legitimacy. Indeed, in some communities people have resorted to informal "justice systems", often with quite appalling results (Kennedy 1995). It is difficult to see how the entire community can move to a situation where it feels secure and where the rule of law holds sway unless there are significant changes in the make-up, structure, culture and powers of the police.

Key elements of this change must be the repeal of emergency legislation, the creation of an independent system to investigate complaints, extensive education of police officers to ensure respect for human rights and a move away from a military style police force to an unarmed police service. CAJ's more detailed views on the question of policing are contained in a recent submission to the Police Authority, a copy of which is attached for your information.

Regrettably the government and the police themselves do not appear to be sufficiently responsive to this urgent need for change. Indeed calls for radical change are often dismissed and interpreted as hostility. While this may be understandable given the sustained attacks on the police during the conflict and the appalling deaths and injuries sustained by its members such an uncritical approach is unlikely to establish a lasting peace.

Conclusion

In our view the principles of the rule of law and the right to security provide a way forward in the formidable task which you are undertaking and in the wider search for an agreed, durable peace and for the removal of all weapons from our society. The strength of the principles for us is that while their practical relevance to the problems here is self evident, they place the solutions proposed for Northern Ireland within the broader context of internationally agreed standards. Furthermore, they provide an objective framework against which implementation can be measured.

We therefore submit that the establishment of the rule of law and the creation of a society in which everyone feels secure are central to an "analysis of matters relevant to the decommissioning issue". The absence of the rule of law and a long and documented history of human rights violations by those entrusted with enforcing the law are both wrong in themselves and have contributed to the unacceptable use and support of violence by paramilitary groups. It is essential to address these issues if concrete progress is to be made towards meeting the goals set out in paragraph 6 of the Joint Communiqué.

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