

The Committee on the Administration of Justice (CAJ)
45/47 Donegall Street, Belfast BT1 2FG
Tel: (01232) 232394 Fax: (01232) 246706



*Commentary by the
CAJ on the human rights
aspects of the
Multi-Party Agreement*

April 1998

Submission No. S.69
Price: £1

Submission No. S.69
Price: £1

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 such as Amnesty International, the Lawyers Committee for Human Rights and Human Rights Watch 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, monitoring, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work 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.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

The human rights aspects of the Multi-Party Agreement

Introduction

The Committee on the Administration of Justice (CAJ) takes no position on the constitutional status of Northern Ireland. Accordingly, it would be inappropriate to comment on many aspects of the Multi-Party Agreement concluded on Good Friday, 10 April 1998. However, as an organisation that is committed to the protection of human rights, we have been asked by many people about the organisation's reaction to the human rights aspects of the Agreement. This document was prepared in response to such requests.

Overall tenor of the Agreement

CAJ has consistently argued that human rights are central to the conflict, and that any sustainable peace process must be built upon a genuine commitment to justice and equality for all. CAJ therefore warmly welcomes the frequent and positive references made to human rights throughout the Agreement. There are few segments of the Agreement which do not – explicitly and implicitly – refer to the centrality of human rights concerns. We are reassured to see that the British and Irish governments, together with all the parties engaged in the talks process, have clearly accepted this as a starting premise. The preambular paragraphs set a clear tone, with all the parties to the Agreement firmly dedicating themselves to “*the achievement of reconciliation, tolerance and mutual trust, and to the protection and vindication of the human rights of all*” (Declaration of Support, paragraph 2).¹

Perhaps even more significantly, the commitment in the preamble is given frequent and concrete expression at various stages throughout the Agreement. This suggests that the commitment is more than rhetorical, and that it amounts to a recognition that true respect for human rights must underpin any hope that the Agreement can provide “*a truly historic opportunity for a new beginning*”.²

Textual Analysis of human rights references

CONSTITUTIONAL ISSUES

In this segment of the Agreement, the parties affirm that whatever constitutional choice is exercised, power shall be exercised “*with rigorous impartiality on behalf of all of the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural*

¹The text of the Multi-Party Agreement is paginated differently in different printed versions. To avoid confusion, all references in the text are made to the chapter title and paragraph numbers, rather than page numbers.

² Declaration of Support, paragraph 1.

*rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos, and aspirations of both communities”.*³

A surprising omission from this listing of rights is that of economic rights, though this is included in listings elsewhere in the document. One must assume, therefore, that this was not a deliberate omission. Nevertheless, it is vital that people concerned about human rights will continue to emphasise the inter-dependence between rights, and reject the notion that somehow economic rights are less important than other rights.

STRAND ONE

The Agreement “*provides for a democratically elected Assembly in Northern Ireland which is inclusive in its membership, capable of exercising executive and legislative authority, and subject to safeguards to protect the rights and interests of all sides of the community*”.⁴ Among the safeguards listed, explicit reference is made to the incorporation of the European Convention on Human Rights (ECHR), a Bill of Rights for Northern Ireland, a Human Rights Commission,⁵ arrangements to ensure that key decisions and legislation are proofed to ensure that they infringe neither the ECHR or any Bill of Rights,⁶ and a possible Equality Commission.⁷

We comment elsewhere on the proposals relating to a Human Rights Commission and an Equality Commission (see page 5), but it is important here to welcome, again, the proposal of the UK government to incorporate the European Convention on Human Rights. We will continue to campaign so that the Human Rights Bill – the legislative tool by which the ECHR is being incorporated - drop its derogation from the Convention regarding seven-day detention, provide recognition of the right to a remedy, and reflect the advances in human rights law since the passage of the European Convention. Yet, despite these reservations, the Human Rights Bill is clearly an advance, and provides an important safeguard.

As to a Bill of Rights for Northern Ireland, CAJ has long campaigned for a specific piece of legislation that would go beyond the ECHR to take account of the particular circumstances of Northern Ireland. We welcome specific reference to it in the text and to the need for this to take place on the basis of consultation, which we believe should include a broad public debate around the question of rights.

In its clauses on the operation of the Assembly, the Agreement envisages that a special committee may be appointed to “*examine and report on whether a measure or proposal for legislation is in conformity with equality requirements, including the ECHR/Bill of Rights. The Committee shall have the powers to call people and papers to assist in its consideration of the matter*”.⁸ It is not clear what relationship, if any, such a committee would have with the Human Rights Commission (see on), nor what significance, if any, should be placed in the fact that such a committee is optional. However, reassurance as to the primordial importance of rights can be found later in the same chapter, when the Agreement lists some of the limitations on the authority

³ Constitutional Issues, paragraph 1(v)

⁴ Strand One; Democratic Institutions in Northern Ireland; paragraph 1.

⁵ *ibid.* paragraph 5b.

⁶ *ibid.* paragraph 5c.

⁷ *ibid.* paragraph 5e.

⁸ *ibid.* paragraph 11.

of the Assembly. Thus, the Assembly only has authority to pass primary legislation for Northern Ireland in devolved areas, subject to: “(a) the European Convention on Human Rights and any Bill of Rights for NI supplementing it, which if the courts found to be breached, would render the relevant legislation null and void”.⁹

Nor are the safeguards limited to the workings of the Assembly. With reference to non-devolved matters, the Secretary of State and the Westminster Parliament must “legislate as necessary to ensure the UK international obligations are met in respect of Northern Ireland”.¹⁰

Furthermore, and very importantly, “as a condition of appointment, Ministers, including the First Minister and Deputy First Minister, will affirm the terms of a Pledge of Office undertaking to discharge effectively in good faith all the responsibilities attaching to their office”.¹¹ Both the Pledge of Office and the Code of Conduct for Ministers incorporate references to human rights. Thus, all Ministers will be expected to take a pledge which, among other things, promises that they will: “(c) serve all the people of Northern Ireland equally and to act in accordance with the general obligation on government to promote equality and prevent discrimination”.¹² The Code of Conduct requires that Ministers “must at all times” work in a way which respects a series of key principles: *impartiality, objectivity, accountability, openness, responsibility, equality of treatment, personal honesty and integrity*.¹³

These parts of the Agreement are very important, not alone for the standards they set for those in elected public positions, but also in the standards they set for public life generally. Ministers, if they are to uphold their pledge of office, will have to ensure that the departments they have responsibility for meet these standards of service. The objectives of serving all the people of Northern Ireland equally, and doing so in an open and transparent manner that makes public bodies fully accountable for their actions, are clearly laid out in the text. It is of course the duty of everyone —elected officials, public servants, and ordinary citizens — to ensure that these objectives are met in practice, but the Agreement at least sets important benchmarks.

RIGHTS, SAFEGUARDS AND EQUALITY OF OPPORTUNITY

Very significantly, a whole chapter is devoted specifically to the issue of human rights. Additionally, the coupling of human rights with a concern around “safeguards” makes it clear how a commitment to human rights has to underpin any long-term resolution of the conflict. CAJ has always argued that human rights protections are vital in their own right and as a matter of principle, but has also recognised that they are necessary to creating the framework within which political accommodation can be reached and peace ensured.

Paragraph 1: All the parties to the Agreement affirm “their commitment to the mutual respect, the civil rights and the religious liberties of everyone in the community”.¹⁴ It is not clear to those who were not engaged in the detail of the negotiations why an

⁹ *ibid.* paragraph 26a.

¹⁰ *ibid.* paragraph 33b.

¹¹ *ibid.* paragraph 23

¹² Strand One; Democratic Institutions in Northern Ireland; annexe A, paragraph ©.

¹³ *ibid.* Annexe A, Code of Conduct.

¹⁴ Rights, Safeguards and Equality of Opportunity; Human Rights; paragraph 1.

enumeration of certain rights was made, and not others. Essentially, the rights enumerated are, with one or two additions (ie the right to equal opportunity for people with disabilities and of different ethnic origin, the right to freedom from sectarian harassment, and the right of women to full and equal political participation), the same as those listed in the Framework Document of 1995.

Paragraph 2: Reference is again made to the determination of the British government to complete its incorporation of the European Convention on Human Rights into domestic law. As noted earlier, CAJ has some detailed criticisms of the Human Rights Bill - the legislative mechanism by which this incorporation will occur, though we welcome the move in principle. The Agreement says that the courts will have the power to “*overrule*” Assembly legislation if it is inconsistent with the ECHR.

Paragraph 3: Reference is made to the fact that there is a public consultation underway in relation to government proposals to create a statutory obligation to promote equality of opportunity, and how best this might be done. The CAJ is currently preparing its detailed submission to the White Paper “Partnership for Equality”, and has a number of very serious reservations about the government’s proposals. We note with interest, however, that some of the details suggested in the Agreement (eg reference to policy appraisals and public access to information) are a definite improvement on what was proposed in the White Paper, and it seems clear that the government will have to amend its proposals in light of the Agreement. In principle, we welcome any greater commitment on the part of public bodies to greater equality; the disagreements lie solely in how best this is done.

Paragraphs 4 & 5: CAJ welcomes the establishment of a new Northern Ireland Human Rights Commission, the explicit reference to the value of international instruments and expertise, and to the value of a specific Bill of Rights for Northern Ireland. We welcome in particular the clearly enunciated need for this new body to have “*an extended and enhanced role beyond that currently exercised by the Standing Advisory Commission on Human Rights*”. If this is to be the case, the powers of the Commission, its composition, its staffing and its resources, will all need to reflect its new very different status. It would have been welcome if some international component had been explicitly included in the composition of the Commission, but this is not necessarily excluded by the current wording. Similarly, it would have been better to clarify that the new Commission had “own motion” powers with regard to legislation, so that the initiative for reviewing legislation could lie with the Commission itself. The current formulation does not however necessarily prevent the Commission from taking the initiative to advise the Assembly regarding legislation that the Commission believes may be counter to human rights standards. CAJ will be monitoring closely these issues in the draft legislation to establish the Commission and will advance its own proposals as to the powers and remit of the new Human Rights Commission.

Paragraph 6: CAJ, as noted earlier, is preparing a detailed response to the government’s White Paper equality proposals. Our belief is that the idea of “*replacing*” the current Fair Employment Commission, Equal Opportunities Commission, Commission for Racial Equality and Disability Council, is ill-considered. There may well be arguments in principle for harmonisation and improvements upon the different anti-discrimination legal regimes, but surprisingly this is not what is being suggested. Instead, a body is to be established which will oversee at least four different legal systems, will engage in detailed and doubtless protracted and controversial negotiations with a series of public authorities, and thereby marginalise the equality agenda. Our argument will be that a single body – if it is to be

established – should arise from much wider and deeper debate with the constituencies concerned than is possible in the period envisaged.

Paragraph 7: So little detail is given about a possible Department of Equality that it is difficult to respond, positively or otherwise. However, in principle, it is attractive that the issue of equality would be given such a central and visible role at the heart of government.

Paragraph 8: It is uncertain what is intended by saying that “*these improvements will build on existing protections in Westminster legislation in respect of the judiciary, the system of justice and policing*”. This might be interpreted narrowly, but we presume that this was not the intention, and that it will be open to the people of Northern Ireland to lead the way in terms of effective human rights protections in all these spheres.

Paragraphs 9 & 10: It is not part of CAJ’s remit to comment on legislative change in other jurisdictions except insofar as they affect Northern Ireland. However, it is clear that the commitment of the Irish government to “*ensure at least an equivalent level of protection of human rights as will pertain in Northern Ireland*” is directly relevant to people living in Northern Ireland and is very welcome. This commitment also reinforces the importance of making human rights advances in this jurisdiction, since it will now automatically have a knock-on positive effect elsewhere. The establishment of a joint committee, arising from the northern and southern Human Rights Commissions, also gives the human rights lobby north and south a potentially important additional mechanism for protecting rights.

Paragraphs 11 & 12: CAJ welcomes the proper attention given to the many victims of the conflict and hopes that they will also feel that “*the achievement of a peaceful and just society would be a true memorial to the victims of violence*”. Concerns about our youth, especially those living in areas particularly affected by the troubles, and the commitment to “*community-based initiatives based on international best practice*”, and to the provision of resources accordingly, are also well placed. It is only in dealing with the legacy of the past – and treating all victims in an equal and inclusive manner – that we can hope to build a better future.

Paragraph 13: While references to support and resources for reconciliation and cross-community initiatives are welcome, it is important that justice be seen as a central building block in any such endeavours. Too often, the justice agenda is portrayed by some as divisive, rather than as a crucial element in any genuine peace-building process.

ECONOMIC, SOCIAL AND CULTURAL ISSUES

Again, CAJ welcomes the fact that there is a specific section of the Agreement referring to the importance of economic, social and cultural issues in bringing about greater rights, safeguards and equality of opportunity for everyone. Specific reference is made to the importance of economic growth, social inclusion, and the advancement of women in public life.¹⁵

¹⁵ Rights, Safeguards and Equality of Opportunity; Economic, Social and Cultural Issues, paragraph 1.

As noted previously, CAJ has some disagreements with the White Paper proposals which are currently out for consultation, but it is very welcome that the Agreement refers explicitly to the Targeting Social Need initiative, and the need to progressively eliminate the differential in employment rates between the two communities.¹⁶ In organising people around an agenda of fairness, CAJ has found that it possible to create important alliances of interest which transcend, without ignoring, important differences.

CAJ welcomes the statement that “*all participants recognise 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*”.¹⁷ It is disappointing that the UK government did not commit itself outright to sign the Council of Europe’s Charter for Regional or Minority Languages (as CAJ has urged for several years), but at least such a step is under “active consideration”.¹⁸ This assertion is followed by a series of specific proposals in relation to the Irish language. Unfortunately, subsequent media disclosures¹⁹ have caused grave disquiet with respect to the British government’s intentions with regard to its commitments about the Irish language. In an NIO leaked document, a senior official briefing his Minister wrote of these commitments: “What these worthy sentiments might mean in practice is a matter of interpretation, and we could argue that our interpretation is as valid as anyone else’s”. The tenor of the rest of the memorandum suggests that a minimalist interpretation is to be assumed if not encouraged. CAJ will want to challenge any such interpretation.

SECURITY

While CAJ welcomes any moves towards the “*normalisation of security arrangements and practices*”,²⁰ we were very disappointed that the Agreement goes no further than re-state the position *ex-post ante*. Our view is that there is no emergency threatening the life of the nation, and therefore there is no justification in international law for emergency legislation. All emergency law should therefore be dismantled. We will continue to argue that the powers available in the ordinary criminal law are sufficient to deal with any continuing threat. Short of repeal, the government should immediately close the Holding Centres and apply PACE and its Codes of Practice to all those detained under emergency law.

POLICING AND JUSTICE

CAJ welcomes warmly both the language and the content of that element of the Agreement dealing with policing. We have argued since 1995²¹ that a thorough-going review of policing was required and that an International Commission into Policing would be an appropriate mechanism for bringing such a review forward. We share the desire of others that the Agreement presage “*a new beginning to policing in*

¹⁶ *ibid.* paragraph 2 (iii)

¹⁷ *ibid.* paragraph 3.

¹⁸ *ibid.* paragraph 4.

¹⁹ see “Exposed: NIO Deal Deceit” front page story, 2 May 1998, Andersonstown News.

²⁰ Security; paragraph 1.

²¹ see CAJ submission to the Police Authority for Northern Ireland, August 1995 (S. 35)

Northern Ireland with a police service capable of attracting and sustaining support from the community as a whole.²²

In a recent major international comparative research project into policing,²³ CAJ brought together lessons for better policing in Northern Ireland. The concepts highlighted in the Agreement mirror the conclusions of our own research: *“The parties believe it is essential that policing structures and arrangements are such that the police service is professional, effective and efficient, fair and impartial, free from partisan political control, accountable, both under the laws and to the community it serves, representative of the society it polices, and operates within a coherent and co-operative criminal justice system which conforms with human rights norms”*.²⁴

The Agreement does not establish an International Commission, but it does stress that the Commission should be independent, that it should be broadly representative with expert and international representation among its membership, and that it should consult widely (including with expert non-governmental organisations). It also has a clear timetable – it must report no later than summer 1999. The terms of reference outline the need for widespread community support, a legislative and constitutional framework requiring impartial policing, a clear framework of legal and democratic accountability, and an effective complaints system.²⁵

There is therefore clear potential for change. The outstanding CAJ concern must lie in decisions still to be taken about the composition of the Commission, about its powers and its mode of operation and how it will dovetail with the proposed criminal justice review and consideration of emergency law. We will be monitoring these aspects closely. The Commission itself must gain the acceptance of the whole community if it is to do an effective job in ensuring that the police do likewise. Similarly, it must have wide-ranging powers to compel witnesses, subpoena documents, appoint its own staff (to be truly independent of government), and to commission research. It is vital that the Commission engages with difficult and highly political issues of accountability, fundamental organisational and cultural change, and representation, rather than merely engaging in a managerial exercise in “downsizing” a large institution for peace-time efforts. It is also important that the issue of policing is not side-lined until the Commission reports: there is much that should be done in the next twelve months.

Alongside the Commission into Policing, this chapter promises a *“parallel wide-ranging review of criminal justice”*.²⁶ In comparison to the detail on policing, the terms of reference and status of this review are much vaguer. This review should involve a fundamental change of criminal justice legislation, the judiciary, and other organs of the legal system, but it is to *“be carried out by the British Government through a mechanism with an independent element”*.²⁷ CAJ believes that it is important that this review is not in effect an in-house government review, but that the independent element has a significant input into the recommendations of the review. For example, scrutiny of the workings of, and necessary changes to, the judiciary are not adequately addressed in the Agreement. Yet the fact that it is to be given even greater powers in future (with the possibility of striking down Assembly legislation), makes it more not less important to examine questions around the judiciary.

²² Policing and Justice; paragraph 1.

²³ See CAJ report, Human Rights on Duty, December 1997.

²⁴ Policing and Justice; paragraph 2.

²⁵ Policing and Justice; paragraph 3 and Annex A with the Terms of Reference.

²⁶ Policing and Justice; paragraph 5.

²⁷ *ibid.*

Debate of such vitally important issues should not be left to, for example, a largely internal review, carried out by the Northern Ireland Office.

The timetable of this review (Autumn 1999) is reportedly established to allow criminal justice matters referred to it by the Commission into Policing to be considered. While a good idea in principle, this makes it all the more unacceptable that the criminal justice review be carried out by a mechanism largely internal to the civil service. Important issues relating to the powers of the police, and police relations to the criminal justice system, may be identified by the policing commission only to be referred to an internal NIO body with the limitations that would impose.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF IRELAND

In a formal text which is a rider to the detailed text, the two governments reaffirm *"their commitment to the principles of partnership, equality and mutual respect, and to the protection of civil, political, social, economic and cultural rights in their respective jurisdictions"*. It is noteworthy that this list includes economic rights, whereas Article 1(v) which follows (and which replicates paragraph 1(v) in the segment entitled "Constitutional Issues!" earlier) does not do so. This is presumably a simple oversight.

Concluding Remarks

Given the importance accorded to the rights dimension in the language of the text in almost every element of the Agreement, what outstanding concerns, if any, do human rights activists have?

Firstly, there are a number of specific issues left somewhat ambiguous in the document. This may be due to sheer exhaustion on the part of the negotiators, but we will want to ensure that this ambiguity is not abused in any way. For example, we will want to push for the drafting and passage of a Bill of Rights for Northern Ireland following widespread public consultation and debate; it cannot be left as an 'optional extra' subject to the political parties agreeing to its drafting. Further, we will be arguing against the idea of an Equality Commission, as currently proposed by government, since we fear it will marginalise rather than mainstream the equality agenda. We will also be arguing that economic rights be considered on a par alongside civil, political, social and cultural rights.

Secondly, even if the Agreement is accepted in referenda, there is much work to turn fine rhetoric into solid practical results on the ground. In the immediate future, we will be monitoring decisions made regarding the composition, powers, and terms of reference of the Human Rights Commission and the Commission into Policing, as well as the Criminal Justice Review. Much will depend on getting these mechanisms operating effectively with expert members, willing to engage seriously and constructively with a long legacy of problems. In the coming weeks and months, CAJ will have to prepare for an even fuller programme of work and, as many have said of

the broader political agenda, "the work is just beginning". We will also need to resist the temptation to concentrate all our efforts on initiatives which, at best, will produce results in mid to late 1999. There are many concerns that need more urgent attention:

- The forthcoming marching season, and the need to hold the authorities and the police to account to provide an impartial service to all;
- The use of plastic bullets by the police and army;
- The follow-up to the recent report by the UN Special Rapporteur on the intimidation of lawyers and his calls for an inquiry into the death of Pat Finucane;
- Lobbying around the Police Bill currently going through parliament;
- Submission to the consultative process around the White Paper on the equality agenda.

Thirdly, in addition to the immediate programme of work, we have to develop a much longer-term human rights agenda and, in that regard, the very process of political negotiations around the Agreement has created a problematic legacy. Many commentators allowed the rights debate to be portrayed as an issue of concern primarily for nationalists, even to a point where gains for human rights were portrayed as gains for nationalists, and as losses for unionists. CAJ has consistently argued that human rights are not matters for political negotiation and should not be treated as bargaining chips. Yet this is precisely what they became. This poses problems for the future. A society that allows itself to believe that rights can be the preserve of some, rather than recognising that we all benefit from a society that respects rights, is in trouble. Moreover, in the new political arrangements envisaged by the Agreement, a consensus approach involving unionists and nationalists is required. Practical advances in the field of human rights will be an uphill battle if they are seen as the preserve of one of these groups only.

CAJ will need to work even harder than ever to insist that human rights belong to us all without distinction, and to lobby government, political parties and others with influence to ensure that this becomes the reality on the ground.

**Committee on the Administration of Justice
45-47 Donegall Street
Belfast BT1 2FG**

*Extra copies of this document can be obtained from the above address
A publications catalogue and details of CAJ membership
are also available on request from the above address*