

What is the Committee on the Administration of Justice (CAJ)?

CAJ is an independent non-governmental organisation, which is affiliated to the International Federation of Human Rights (IFHR). CAJ monitors the human rights situation in Northern Ireland and works to ensure the highest standards in the administration of justice. We take no position on the constitutional status of Northern Ireland, seeking instead to ensure that whoever has responsibility for this jurisdiction respects and protects the rights of all. We are opposed to the use of violence for political ends.

CAJ has since 1991 made regular submissions to the human rights organs of the United Nations and to other international human rights mechanisms. These have included the Commission on Human Rights, the Sub-Commission on the Promotion and Protection of Human Rights, the Human Rights Committee, the Committee Against Torture, the Committee on the Rights of the Child, the Committee for the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, the Special Rapporteurs on Torture, Independence of Judges and Lawyers, Extra judicial, Summary and Arbitrary Executions, and Freedom of Opinion and Expression, the European Commission and Court of Human Rights and the European Committee on the Prevention of Torture.

CAJ works closely with international NGOs including Amnesty International, the Lawyers Committee for Human Rights, Human Rights Watch and the International Commission of Jurists.

Our activities include: publication of human rights information; conducting research and holding conferences; lobbying; individual casework and legal advice. Our areas of expertise include policing, emergency laws, children's rights, gender equality, racism and discrimination.

Our membership is drawn from all sections of the community in Northern Ireland and is made up of lawyers, academics, community activists, trade unionists, students, and other interested individuals.

In 1998 CAJ was awarded the Council of Europe Human Rights Prize in recognition of our work in defence of rights in Northern Ireland. Previous recipients of the award have included Medecins Sans Frontieres, Raoul Wallenberg, Raul Alfonsin, Lech Walesa and the International Commission of Jurists.

RESPONSE FROM THE COMMITTEE ON THE ADMINISTRATION OF JUSTICE TO THE HEALING THROUGH REMEMBERING PROJECT

Introduction

CAJ welcomes the publication of the discussion document “All Truth is Bitter” which is a significant contribution to the discussion about truth and justice in Northern Ireland.

CAJ’s remit, as a civil liberties group, relates to the application of international human rights law in Northern Ireland and as a result focuses on abuses carried out by the state. Therefore our perspective does not represent a complete picture of the suffering of the victims of the conflict in Northern Ireland. However, we believe that it represents an important strand in the suffering endured by individuals and communities in Northern Ireland during the last thirty years. Indeed we have consistently argued that the abuses carried out by the state have fed and fuelled the conflict generally. Since our inception in 1981, we have often worked with those bereaved as a result of action by the security forces, both police and army. We have also been approached for assistance by families whose loved ones have been killed by paramilitaries but who believe that members of the security forces colluded with their killers.

Throughout the course of the conflict some 360 individuals have been killed by the army or police, approximately eleven per cent of all conflict-related deaths. It is impossible to estimate in addition how many deaths attributed to paramilitaries were in fact wholly or partially the result of collusion between state forces and those paramilitaries. However, there appears to be credible evidence which suggests that such collusion took place and was reasonably widespread.¹ Indeed concerns about such behaviour were so widespread that at one point, the RUC asked John Stevens, the Deputy Chief Constable of Cambridgeshire, to investigate allegations that members of the security forces were passing on information on individuals to members of loyalist paramilitary groups.²

Parity of Treatment

¹ See Report of the Special Rapporteur on the Independence of Judges and Lawyers on his mission to the UK (E/CN.4/1998/39/Add.4): Lawyers Committee for Human Rights, *At the Crossroads: Human Rights and the Northern Ireland Peace Process*, 1996 and *Human Rights and Legal Defence in Northern Ireland*, 1993; British Irish Rights Watch, *Alleged Collusion and the RUC*, November 1996; Relatives for Justice, *Collusion 1990-1994: Loyalist Paramilitary Murders in North of Ireland* (London/Derry: RFJ, 1995) and *Shoot-to-Kill and Collusion* (London/Derry: RFJ, July 1993); Amnesty International, *Political Killings in Northern Ireland* (London: AI, February 1994); Committee on the Administration of Justice, *Adding Insult to Injury? Allegations of Harassment and the Use of Lethal Force by the Security Forces in Northern Ireland* (Belfast: CAJ, December 1993).

² John Stevens was appointed to head an investigation into alleged collusion between loyalist paramilitaries and the security forces following the murder of Loughlin Maginn in August 1989. His full report was never published but as a result of the investigation, there were forty-six prosecutions and 183 convictions for separate offences although no police officers were prosecuted.

CAJ believe that the victims of state violence and their relatives must receive the same recognition of their loss as victims of paramilitary violence. While the state has successfully prosecuted many individuals accused of paramilitary killings, it is abundantly clear that, in terms of investigation and prosecution of those responsible, the response of the state to killings by the police and army has been inadequate. Despite the fact that over 360 deaths have been caused by members of the police and army on duty, there have only been 22 individuals prosecuted and only four of those prosecutions were successful. Two of the four were released after serving approximately three years of a life sentence. The other two, Guardsmen Fisher and Wright, were released after serving approximately six years of their life sentences. All four were soldiers. No police officer has been convicted for a killing committed while on duty.

In many of the cases where collusion is alleged, there have been no or very few prosecutions (for example in the cases of Patrick Finucane, the Dublin/Monaghan bombings, and the murder of Patrick Shanaghan). There is also particular concern in relation to approximately forty murders committed in the mid-Ulster area between 1989 and 1994, and a larger number of deaths in the South Armagh area in the 1970s. To date there have been few prosecutions arising out of these cases and many of those bereaved believe that there is evidence to suggest police collusion in the killings and inadequate or incompetent investigations. Some of the family members also report that they have been harassed by the security forces since the murders. While inquests in some of the cases have taken place, few families fully understood their rights in relation to the hearing. In one case the inquest lasted fifteen minutes.³ Indeed such was its concern at similar allegations in 1995 that the United Nations Human Rights Committee recommended that specific efforts be made by the UK government to resolve outstanding cases.⁴

While many murders committed during the course of the conflict in Northern Ireland remain unresolved, the above suggests a pattern of impunity in cases where the state has been or is suspected of having been involved in the killing. Real or apparent inaction or disinterest on the part of those in authority to such concerns often exacerbates the feelings of loss already experienced. We believe that some means must be found to acknowledge the loss of those bereaved in these circumstances. It is incumbent upon the state to devise a means of acknowledging that human rights abuses took place and to provide an adequate remedy. We also believe that it must commit itself to disclosing details of its role in those abuses. We believe that this may provide the victims of such abuses with some sense of justice, which will help to address their pain and loss. We believe consideration of those international human standards which are relevant to this discussion should persuade the state to act in this way.

It is true however that while there are some relevant international standards, they provide only limited insight into this matter. It may therefore be useful, when considering what remedies are possible in this context, to have regard to the experience of other jurisdictions which have gone through periods of conflict. In many of these societies, the benefit of addressing past grievances has been recognised.

³ Human Rights Watch/Helsinki, *To Serve Without Favor*, 1997.

⁴ Comments of the Human Rights Committee CCPR/C/79/Add.55 27 July 1995.

“All Truth is Bitter” obviously concentrates on the Truth and Reconciliation Commission in South Africa but there are many other less well-known models which have been used.

There is a vast array of truth processes around the world, and they all reflect the particular circumstances of the country or territory that they have been established in. One very obvious distinction between the South African and Northern Ireland experiences for example is that the extent of constitutional change in the two places are in no way comparable. While the new authorities in South Africa had a vested interest in uncovering what their apartheid predecessors had done, no such situation prevails here. In Northern Ireland, the authorities responsible for security related issues have remained exactly the same and clearly therefore would have a vested interest in not examining too closely deaths or human rights abuses caused by the state in the past.

Despite this totally different political context, there are however certain clear legal standards which must be complied with, regardless of the jurisdiction involved. In the Northern Ireland case, for example, the state's obligations to uphold the right to life was underscored by recent judgements from the European Court of Human Rights (Kelly, Jordan, Shanaghan and McKerr v UK, 4th May 2001). In these cases, two of which were taken by CAJ, the relatives of twelve individuals killed by the police, army or in circumstances suggesting collusion by the state, successfully argued that the UK had violated article 2 of the European Convention, guaranteeing the right to life. The Court stated that investigations into violations of the right to life by the state should be independent, transparent, public, prompt and capable of leading to the identification and prosecution of those responsible. While there may be political considerations which inevitably impact on discussions about these matters, these principles identified by the Court should, in our view, govern the parameters of any discussion relating to truth.

The Bloomfield Report

We wrote in similar terms to these to Sir Kenneth Bloomfield when he was drawing up his report. We were disappointed at the limited extent to which the points that we made were reflected in his conclusions. In his 60 page report, one paragraph was reserved for the victims of state violence whereas frequent reference was made to other victims. Furthermore, although he set out some of the views which had been communicated to him by representatives of the families of this group, he did so without personal comment, in complete contradiction to the manner in which he rightly made highly personal interventions in the case of the disappeared. For instance, he never once in his report suggested that the state should disclose and apologise for its role in the many controversial killings for which it was, or was suspected of, being responsible. However, he voiced a “fervent appeal” that those, who can provide information on the location of the almost twenty disappeared, do so. In failing to make a similar appeal in the case of the victims of state violence, Sir Kenneth reinforced the sense of disinterest that the state has shown these victims.

Sir Kenneth also devoted a great deal of time and attention to the needs of police officers injured in the conflict and the relatives of those officers who were killed. It was important that he did this, since little attention seemed to have been accorded to

the issue of the differential treatment of police widows previously, and some important changes were made in due course. However, he very consciously and deliberately appeared to refrain from becoming an advocate for the concerns of those whose relatives were killed by the state. Here, he simply recorded the concerns and noted he had agreed to pass them on.

While his report did discuss the possibility of a truth and reconciliation commission, it did so in a relatively negative way. CAJ are not prescriptive about the way in which the state discloses the truth of its role in the very many of controversial deaths in which it was involved, but it must be done. International law is clear that the state must be held accountable for its actions and indeed is under an obligation to provide an effective remedy for those whose rights have been violated (Article 13, European Convention on Human Rights; Article 2(3), International Covenant on Civil and Political Rights).

Truth process Vs Inquiries

We have already mentioned the work we have done with individual families over the course of the last twenty years. Much of that work, particularly in the last five years, has concentrated on trying to persuade the government to establish public inquiries into certain deaths or incidents. The reliance on the demand for public inquiries is of course to a large extent reflective of the fact that all normal mechanisms (inquests, police investigations, prosecutions) have largely been ineffective in uncovering evidence of state abuse of human rights in particular. However, it is also informed by the fact that the state has certain legal obligations in terms of international human rights law (and indeed domestic law by way of the Human Rights Act), and that public inquiries should theoretically comply with those obligations unlike other less robust inquiries.

It is quite clear that unfortunately the issue of victims is being exploited for political ends. For instance there appears to be a widespread and completely inaccurate campaign of disinformation about how many inquiries have been established. Indeed the success of this campaign is to some extent reflected in the "All Truth is Bitter" document which states at page 26 the "difference between the workings of the Truth and Reconciliation Commission and the nature of current judicial and independent inquiries in Northern Ireland may be instructive". In fact only one public inquiry has been established into the killing by the state of fourteen unarmed peaceful civil rights protestors on Bloody Sunday. There is no public inquiry into the murder of Patrick Finucane or the credible allegations that the state used its agents within loyalist paramilitary groups to target him and scores of other people. There is no public inquiry into the murder of Rosemary Nelson or the fact that death threats made against her were not properly investigated. There is no public inquiry into the murder of Billy Wright who was killed in what was supposedly the highest security prison in Europe by a number of armed men. There is no public inquiry into the murder of Robert Hamill who was beaten to death while police officers sat nearby in a landrover and whose killers were allowed to leave the scene by the police.

There is great concern amongst those who have campaigned in these cases and others that the establishment of a broad based truth process may in reality become a

mechanism to reduce the truth telling process in relation to the above cases and others to a relatively meaningless exercise which will essentially allow the state to shirk its responsibilities. Those in favour of such a process need to engage with this concern.

This concern was heightened by the recent draft Bill of Rights document issued by the Human Rights Commission which in its chapter on victims appeared to abrogate to itself the right to reject the right of families to seek redress. It is established law that the state has a duty to properly investigate at least those cases where its agents have been or are suspected of having been responsible for killings (Kelly, Jordan, Shanaghan and McKerr v UK). It has also been established by the European Court of Human Rights that the systems in place for dealing with such cases in Northern Ireland fell far short of Article 2 standards.

Other issues

There are of course a number of practical matters which must be addressed in the context of the establishment of a truth process such as defining the period under scrutiny, the mandate of such a mechanism, the timescale for the work, and amnesties.

All of these issues have caused controversy and difficulties elsewhere when truth processes have been established, in particular in South America and South Africa.

Period under scrutiny

A very problematic discussion in many other countries around the world has been the period of time to be covered by any truth process. This is often problematic both in administrative terms and in political terms. The longer the period of time covered, the more likely it will be that the process will focus on trends and patterns, rather than on individual deaths and events. While there are practical arguments for either of these approaches, often the arguments are also intensely political and derive from different understandings of the conflict, its causes and consequences.

In the Northern Ireland context, one imagines that many people will argue for any truth process to cover at least the period of Direct Rule from 1972, others will argue for it to cover the lead up to and immediate aftermath of the civil rights marches. Even for those who count the Troubles as dating from 1968 or 1969, deaths in 1966 were seen as Troubles related and included in accounts of this period (see Cost of the Troubles - page 18). Yet others will argue that the roots of the conflict has much earlier roots - whether at the time of partition, or in the preceding centuries.

This is, as indicated, a highly political debate. From a human rights perspective, CAJ would have little to say apart from emphasising our own assessment of the conflict which is to assert that it has been fed and fuelled by human rights abuses. Accordingly, a concentration on the consequences of the conflict alone would be insufficient in human rights terms. If the more recent timeframe of 30 or so years is taken for the terms of reference, one would need to examine what gave rise to the civil rights movement, what response was forthcoming from those in positions to

respond to the demands made, and the links between these developments and the horrendous large scale violence that began thereafter.

Mandate

In addition the mandate for any truth seeking body must be clear. CAJ is, as already indicated, a human rights organisation which examines only the actions of the state. However, it is clear that any truth seeking body must have a broader mandate than that. We have already emphasised our view that any such process must be comprehensive.

There are other questions to be considered in the context of mandate. Will only incidents involving death be considered; will broad policy changes be subject to inquiry or broad historical trends; will there be hearings; what will happen with the material gathered, etc.

Timescale for work

Any such process must be strictly time limited with little discretion for extension of time limits.

Amnesty Laws

In developing policy positions on the various issues likely to be discussed in the course of political negotiations (policing, emergency laws, criminal justice reforms, Bill of Rights, human rights institutions, equality protections etc), it became clear to organisations like CAJ that certain issues were not amenable to an international human rights construct. This was obviously true in the context of the various political structures and constitutional arrangements, but was also true in regards to the issue of prisoners. There are no clear international standards regarding the issue of prisoners at times of transition, and we therefore had little to contribute to the debates 'pro' and 'con' early release.

Of course the one thing that international human rights law is clear about is that there should be no impunity. Whether to institute early release, and what the nature of those releases should be, would need to comply with this principle. In the Northern Ireland case, prisoners were released early without any truth-telling process, but they had at least gone through a trial process which, while painful for the families of the victims, may have provided some information about the circumstances in which their loved ones died. It is of course axiomatic, given the figures highlighted above, that those whose loved ones died at the hands of the state did not in the vast majority of cases have the opportunity of attending a trial.

There has of course been considerable speculation in the press recently that the government is on the verge of introducing a new amnesty law which will grant amnesty to a number of individuals currently wanted by the police for offences

committed during the course of the conflict. It has also been suggested that the government is considering extending this amnesty to police officers and soldiers.

While of course amnesties may be considered necessary to ensure the development and maintenance of the peace process, victims cannot be expected to engage in a collective act of amnesia. Nor should society accept any procedure which amounts to impunity. The granting of amnesties, if being seriously considered by the government, must be linked to some truth telling process. This need not necessarily be through prosecution of those involved, particularly given the problems surrounding the continued existence of Diplock Courts. The granting of amnesty has of course featured in truth processes elsewhere. In South Africa this has been linked to co-operation with a truth process. This was not uniformly the case in South America with the consequence that the Inter-American Court of Human Rights condemned amnesty laws in certain jurisdictions.

Conclusion

The issue of victims is one of the most sensitive matters to be dealt with in the context of the peace process. However, it is a matter which must be addressed comprehensively. As the Good Friday Agreement stated:

“The tragedies of the past have left a deep and profoundly regrettable legacy of suffering. We must never forget those who have died or been injured, and their families. But we can best honour them through a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all.”

The suggestion is not that we ignore the needs of victims but, on the contrary, bear their pain in mind in determining the arrangements needed to establish a better society in force. The way in which the government treats victims can become a leitmotif for the new society which we wish to build. All must be treated equally and there can be no distinction because of the status or motivation of who their killers were. While all parties to the conflict have a responsibility in this regard, there is a particular onus on government, because of its obligations under international law and its role in society, to now establish a pattern of open and transparent behaviour which will become the norm for government in the future.

CAJ therefore suggests that the issue of truth can only be addressed in the context of a full and informed examination of the past. There must be acknowledgements from all parties to the conflict including the state that wrongs were committed. There must be undertakings to co-operate with a fair and impartial truth seeking mechanism. Co-operation on the part of the state must include full disclosure of material including documents relevant to the conflict. Nothing can be exempted from this undertaking save information which would clearly put someone's life in danger. The truth seeking mechanism must be properly equipped in terms of expertise and powers. It must be time limited, have a clear mandate to examine the conflict and its origins and must act in accordance with international human rights standards. In the event that amnesties are granted they must be accompanied by disclosure about offences committed.