

**Testimony by the
Committee on the Administration of Justice (CAJ)
to the**

**House Committee on International Relations
Sub-Committee on International Operations
and Human Rights**

16 March 2005

Thank you for the invitation to testify today. The Committee on the Administration of Justice (CAJ) is an independent human rights organisation that draws its membership from across the different communities in Northern Ireland. CAJ works on behalf of people from all sections of the community and takes no position on the constitutional status of Northern Ireland. In 1998, CAJ was awarded the prestigious Council of Europe human rights prize by the member states of the Council of Europe in recognition of its efforts to place human rights at the heart of the peace process. One of the reasons for the success of our work on the peace process has been the continued involvement and interest of the United States. In this context we would particularly like to thank the honourable members of this Sub-Committee for this opportunity to raise these important issues and in particular the Chairman Chris Smith for his work in this area. Chairman Smith will of course know that I and other CAJ colleagues have testified before Congress before. On one occasion my colleague Paul Mageean sat here before you alongside Rosemary Nelson, an executive committee member of the organisation, and I could not let this occasion pass without noting that yesterday was the sixth anniversary of her murder.

My colleagues have spoken of a number of cases which are, or should be, the focus of public inquiries. However, bearing in mind that there are many cases in Northern Ireland deserving of a public inquiry where such an inquiry is unlikely to be established, I will focus on other mechanisms. One recent and very relevant development is the establishment of the Serious Crime Review Team.

CAJ has long been concerned with the issue of the state's use of lethal force, issuing reports into specific incidents and campaigning for changes in policing and in the inquest system, and urging appropriate mechanisms for oversight and accountability. In this context, we successfully took a number of cases to the European Court of Human Rights. The Court found in our favour, concluding that the State had violated article 2 of the Convention (the right to life provisions) by not adequately investigating the incidents that led to the loss of life. Compensation and costs were ordered against the government. These cases (six in total) were concluded between 2001 and 2003 but as recently as last month (February 2005) the Committee of Ministers, which as the highest political organ of the 46-member Council of Europe, determined to keep an active watching brief on the cases. In an Interim Resolution (which CAJ would like, with permission of the Chair, to have read into the record), the Committee of Ministers explicitly stated that *"there is a continuing obligation to conduct (article 2 compliant) investigations inasmuch as procedural violations were found"*.

In seeking to answer the concerns of the Committee of Ministers, the UK government had relied heavily on the fact that it was establishing a Serious Crime Review Team to examine all historic cases. The argument was made that this Review Team would be given resources to ensure appropriate investigations or re-investigations of all unsolved cases, and that this would in large part respond to the requirement of the European Court, and the Committee of Ministers, in complying with the judgments handed down against the UK government.

CAJ and other human rights groups following this debate closely have a number of concerns that they would like to share at this stage. We would respectfully suggest that this Sub-Committee conveys its interest in this issue to the appropriate British and Irish authorities, as co-guarantors of the Agreement, asking to be kept informed of developments.

Firstly, by way of background, the Secretary of State for Northern Ireland, Paul Murphy, announced the creation of a new unit within the Police Service of Northern Ireland (PSNI) to review unresolved deaths and provide bereaved families with answers to questions they have about the loss of their loved ones. He said *"We*

believe that Northern Ireland needs a tailored approach to deal with the pain, grief and anger associated with its past. Part of this approach is the need to address, in a systematic and comprehensive way, all of the unresolved deaths that took place during the Troubles”.

The statement goes on to explain that the Serious Crime Review will be “*a new ring fenced unit created by the Chief Constable*” and headed up by recently retired Metropolitan Commander, Dave Cox. Mr Cox will be assisted by a head of investigations, who has been seconded from the Metropolitan Police – Detective Superintendent Phil James. Both men previously worked on the Steven’s team inquiring into the murder of Pat Finucane.

The Northern Ireland Office press release goes on to explain that the Unit will be served by a mix of serving and retired police officers from the PSNI and British police forces; that a key part of the process will involve the disclosure of appropriate information to families of victims; that the PSNI will create a dedicated intelligence team working in the Review Unit and some mechanism to ensure an effective review process and public confidence. All complaints about actions by the PSNI (including seconded) officers attached to the Unit will be subject to investigation by the Police Ombudsman in the normal way, though this would not extend to agency staff as they will not be exercising police powers. Media reporting of the establishment of the new Unit suggest that government is financing this measure to the tune of £30m over a six year period.

Before elaborating some of the concerns or reservations that CAJ and others have with regard to the Serious Crime Review Team, let me start by welcoming the fact that government is trying to engage in some way with the legacy of the past. Human rights violations have fed and fuelled the conflict in Northern Ireland but – for all its powerful commitment to a more just and peaceful and human rights compliant society in the future - the 1998 Agreement said little about the past. There is, in the preamble, a passing reference to the fact that “*the tragedies of the past have left a deep and profoundly regrettable legacy of suffering*”.

The Agreement also addresses very positively the changes (political, institutional, legal, social, cultural and economic) that are needed. But it says little about how to address the past, and this is increasingly being recognised as inadequate.

The establishment of a Serious Crime Review Team is a small part of the overall jigsaw of responses that is needed if Northern Ireland is to successfully address its past and turn its legacy of pain into a positive agenda for “the way forward”.

But this is CAJ’s first reservation about the announcement of the Serious Crime Review Team. This initiative must not be seen as in any sense a comprehensive response to the legacy of the past. That would be quite unacceptable. Government does, in its press release, state that the Review is “part” of a response, and we would wholeheartedly endorse that. Unfortunately, major initiatives such as this, particularly involving a fairly high level of staffing and public resources, can consciously or unconsciously fill a void, and over time become seen as “the” answer. This would be entirely wrong for several reasons. Firstly, the UK government alone, as one of the parties in dispute, cannot be the sole provider of any vehicle for an assessment of the past, and any attempt for it to do so would undermine all hope of its success. Secondly, whilst it is true that Northern Ireland needs a “tailored” response to the legacy of the past, it is clear from all other societies in transition that an array of different measures and responses are needed, and no single initiative – however widely it is ‘owned’ – will prove sufficient.

A second reservation that we and other human rights groups share relates to terminology, since terminology can be extremely important in societies in conflict, and especially at times of transition. The NIO press release talks of the Review looking at “some 1800 murders”. The key word here is “murders”. Deaths at the hands of security forces are not considered “murders” in any official statistics. If taken at face value, this might suggest that the Review will not be looking at any of the deaths caused by army or police personnel. CAJ and others have received assurances from the Police Service of Northern Ireland that no such interpretation should be placed on this formulation, and that the Review will examine “*1876 unsolved incidents of murder (some with multiple victims) and a further 400 deaths related to the security situation in Northern Ireland*” (our emphasis).

While welcome that all unsolved cases, regardless of the perpetrator, will be examined, it is still problematic that a linguistic distinction is retained between “murders” and “deaths”. The Review is in the hands of the PSNI so it would be deeply unfortunate to use terminology which from the very outset implies an inherent bias towards the exoneration of alleged state abuses.

The problem, however, is clearly not one solely of terminology. As noted, the Review is a PSNI Review. This will create real and perceived problems of impartiality when the PSNI is responsible for investigating allegations that police or army officers were directly or indirectly involved in criminal acts. It is very welcome that the Northern Ireland Office talks of a “ring-fenced” Unit, and has introduced senior managerial and detective officers from outside of the jurisdiction to take the work forward. The issue of independence however is crucial to the success of this enterprise, and government should be asked to comment in more detail on how it intends to ensure an independent process.

If the process is to be independent and seen to be independent, human rights non-governmental groups will be asking questions such as - What are the lines of accountability and responsibility from the Unit to the Chief Constable? Are the lines of authority direct or are they mediated through PSNI officers who served previously in the Royal Ulster Constabulary who may be expected to retain some loyalty to that institution and to former colleagues? What proportion of officers are being recruited or seconded from outside the jurisdiction, and how broad is this pool of independent investigators? The NIO press release talks of PSNI and British officers, for example: why not draw also on police expertise from other European (including Irish) jurisdictions, and from other parts of the world? How public and transparent will the whole process be? How closely will the Policing Board be involved in civilian oversight of the process and the policy lessons that arise in the course of the Review? Will the Police Ombudsman have jurisdiction over retired PSNI officers who join the team? How will the Review Team handle particularly problematic but grouped cases – such as all those cases that were handled by the Royal Military Police in the early 70s, where no police investigation was undertaken.

An obvious way of ensuring greater public confidence in the independence of the process is to ensure that there are a series of safeguards built in. One of those safeguards would be the principle of transparency. Clearly, investigations into murders and collusion are going to uncover a great deal of sensitive information. Families have a right to know what happened to their loved ones, but the police have a duty to protect the safety of all; they cannot divulge information in a way that would put others at serious risk. So, a careful balance will have to be struck. However, it is vital that to the extent possible, the needs of victims and of the wider public are met and that they are kept apprised of the approach being taken, and of the progress in the Unit's work.

It is particularly important that the public, and the specialised policing oversight bodies, are kept abreast of the learning that is arising from the re-examination of old cases. It is evident, even before the Unit formally starts work, that the investigative practices of the past are likely to be found seriously wanting – however, one of the key questions is whether all of the possible lessons have yet been learnt. It seems unlikely. The Cory report into the cases of Robert Hamill, Rosemary Nelson and Billy Wright – all of whom died in the period leading up to and after the peace agreement (1997-1999) – highlighted relatively recent 'system' failings. Those charged with ensuring policing and criminal justice change must examine whether the various reforms introduced in recent years have in fact been adequate to respond to those failings, or whether further change is needed. Again, this 'learning from the past for the future' underlines the importance of keeping the process as independent as possible from those individuals and institutions closely involved in past failings – it is unlikely that such people and bodies will think that they have much to learn.

Alongside the reporting process, there needs to be a system of evaluation. The NIO press release talks of "*some mechanism to ensure an effective review process and public confidence*", but no details are given. Will there be a process of independent evaluation and validation of the work of the Review Team and the learning therefrom?

Of very great importance is the learning that should arise from the case review regarding the operation of other criminal justice agencies. It is likely, for example, that many cases will be found to have been investigated by the police to a certain point, but to have failed to convince the Director of Public Prosecutions (DPP) to pursue the case in court.

The Criminal Justice Review arising from the Agreement argued that in future there should be a presumption in favour of the DPP giving reasons for their decision not to prosecute cases. The failure to give reasons for their decisions in the past has led to a serious lack of confidence in the institution, and may well now mean that many individual case reviews will come to an inexplicable halt because of uncertainties at the stage of transfer from the police to the prosecution stage. But families will want to know why the DPP chose not to prosecute, or secure some reassurance as to the justification for that decision. Even if that cannot happen in all cases, those involved will want reassurance that past practices of the DPP in this regard have changed. Many of the most serious concerns around past investigations lie not with police investigation, or not alone with the police investigation, but with subsequent action or inaction by the DPP and/or the judiciary.

This Sub-Committee is aware of the criticisms of the human rights community of the Criminal Justice Review process, which was less independent, international and far-reaching in its work than the equivalent work carried out by the Patten Commission into policing. Despite these weaknesses, the final report provided an interesting blueprint for change but, as with policing, these proposals were not warmly embraced by those responsible for introducing the necessary legislative change. Two separate pieces of legislation were needed to give effect to the recommendations (the first being far from satisfactory), and CAJ and others are now monitoring those changes that are being put into effect. The Justice Oversight Commissioner in his most recent report urged, with regard to the new Prosecution Service that *“as the new service unrolls it is to be expected that an increasing degree of openness and transparency in the service should become evident”*. A measure of any such move to greater openness and transparency should be seen in the willingness of the Prosecution Service to respond positively to any lessons brought to its attention as a result of the work of the Serious Crime Review Team.

While the focus of the Review will be on ‘unsolved’ cases, and therefore any failings in the court system and by the judiciary are less likely to be apparent, there may nevertheless be some relevant experiences to be captured. The judiciary, like the other criminal justice agencies, and indeed even the police service, was not subjected to a major compositional change. Proposals from the Criminal Justice Review about monitoring the criminal justice workforce, and monitoring the impact of the criminal justice system on different individuals and groups in society, are amongst those that are being implemented quite slowly. Accordingly, it would be of great assistance to the agencies to learn as much as possible about the attitudes to and experiences of their work in the past, with a view to learning for the future.

The conclusion from the above is that the Serious Crime Review Team could provide some people with answers to important questions about the past. It will not be, and should not be, seen as a panacea or a comprehensive response to the past. Moreover, it will not even provide bereaved family members with answers to their questions if the Review does not command the necessary level of public confidence. That confidence can only be secured if the Review complies with basic human rights principles of accountability, transparency, respect for human dignity, impartiality and fairness for all involved. To avoid censure – again – at the level of the European Court of Human Rights, all investigations must ensure that they comply with the standards of independent investigation set out in the Court’s jurisprudence for the upholding of article 2 (right to life) compliant investigations.

Confidence will also only be secured if the whole process is not seen as police-driven. The Review is probably unique and is certainly going to raise enormous complexities; there needs to be broad consultation across society to develop an ownership of the process, and the victims need to be placed centre-stage in all deliberations..

This submission has focused on the Serious Crime Review. Needless to say, the human rights agenda for Northern Ireland is much broader than this Review alone. CAJ is actively campaigning for written constitutional guarantees for human rights in a Bill of Rights for Northern Ireland; we are working to turn the equality duty created by the Agreement into something meaningful that will challenge the deep rooted legacy of discrimination and inequalities in our society; and we are working to deliver

criminal justice and policing systems that will deliver justice and fairness to all. At the very time when there are advances in some areas, the Policing Board is discussing introducing a new form of plastic bullet, and is holding its discussions on this contentious issue of public order and weaponry behind closed doors. As public institutions embrace the language and rhetoric of human rights, and indeed in some cases were created with the explicit purpose of upholding these principles, they occasion simultaneously fail to comply with the spirit of those principles.

The United Nations Secretary General Kofi Annan, visiting Northern Ireland in October 2004 noted that *“nearly half of all peace processes collapse within 5 years. Others fall into a sort of limbo of no war, no peace. In the life of almost every peace process, there comes a time – usually three to seven years out – when disillusionment is high, when the wheels seem to be turning without any real forward movement. Fatally this often coincides with the waning of outside interest. Political engagement and financial support are reduced, just when the process needs a second wind....Hard won agreements on human rights and the reform of justice are often eroded once domestic and international attention diminishes”*.

This statement rings true for Northern Ireland, particularly at this sensitive time in the political process. Let me thank you once again, Mr Chair and Committee members, for your continuing interest and commitment to human rights in Northern Ireland.

We need that interest and commitment more than ever.