

**CAJ's Submission no. S409**

CAJ's submission to the Commission for Victims and Survivors  
consultation on their 2013-16 Corporate Plan and their 2013/14  
Work Programme

**May 2013**

## About 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, Human Rights First (formerly 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, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON.

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

## **CAJ Submission in Response to the Commission for Victims and Survivors Consultation on their 2013-16 Corporate Plan and their 2013/14 Work Programme**

### **General Views**

CAJ welcomes the fact that the Commission is now up and running and the fact that it is encouraging and supporting the Victims and Survivors Forum which is an important vehicle for the expression of victims' interests. We believe that the aim and objectives as laid out in the Corporate Plan are sensible and adequately implement the statutory obligations of the Commission. CAJ particularly welcomes Objective 1 which is about developing a number of means, including engagement with the Forum and independent research, for assessing the quality of service delivery and in this respect monitoring the performance of the Victims and Survivors Service. Some criticism of the methods of assessment and the procurement of contracts has been expressed to CAJ, some of which have been shared with the Commissioner, and we believe that this oversight role is important for the future.

CAJ also commends Objective 4 which seeks to establish new standards for the provision of services to victims and the intention to tender publicly for a competent organisation to undertake work to establish these standards. In that process, and more generally in the work of the Commission, CAJ would commend a human rights based approach, which starts from the perspective that victims have rights which arise from their experience of victimisation and which society should fulfil as a basic means of expressing solidarity. We develop this perspective below.

### **A Victims' Rights Perspective**

Victims are people who have suffered unlawful harm of various kinds or, in the words of the United Nations Basic Declaration on Rights of Victims, "substantial impairment of their fundamental rights."<sup>1</sup> Victims of a violent political conflict have had their human rights breached in a particularly clear and flagrant way as the rule of law will have been seriously disrupted and weakened by, on the one hand, violations of human rights by the state and, on the other hand, crimes and abuses by non-state actors which may often amount to terrorism which in itself "seriously jeopardises human rights."<sup>2</sup>

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<sup>1</sup> General Assembly resolution 40/34, annex.

<sup>2</sup> Council of Europe, Guidelines on the Protection of Victims of Terrorist Acts, Committee of Ministers 2.3.2005  
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It may be, then, that solidarity with victims – and in particular victims of violent political conflict – may mean bonding together in the common enterprise of championing human rights. The concept of solidarity implies that a threat to one is a threat to all. The abuse of the human rights of a fellow citizen, anywhere in the world, is a threat to each of us in our enjoyment of human rights. Self-interest, as well as altruistic care for a neighbour, therefore demands that we proclaim and support victims as champions of human rights standards.

There are three general reasons why establishing a paradigm of victims' rights as essential in the overall protection of human rights is important. First, it could mean that victims are seen not as passive recipients of philanthropy but as activists in the re-assertion of the importance of human rights. The empowerment of victims, the restoration of their human dignity might be best ensured by viewing them as leaders in the overall project of assuring the human rights of us all.

Second, this approach might help strengthen the protection of human rights in the "war on terror" that preoccupies many states including our own. It is a principle of the approach of OSCE and other international bodies that the interests of security should not override fundamental freedoms.<sup>3</sup> If victims are seen as the champions of human rights their plight cannot be called in aid to unnecessarily restrict those very rights.

Third, the universality of human rights standards implies that there should be no counter-posing of the "rights of victims" against the "rights of perpetrators". The subjective feelings of some, but by no means all, individual victims may tend to support this opposition but, objectively, neither victims nor the rest of society have an interest in miscarriages of justice or abrogation of the rule of law.

A victims' rights perspective is also a practical way of framing support for or solidarity with victims and to ensure the quality of services provided for them. It seems apparent that the first reaction in the name of solidarity to those who have been hurt or damaged must be assistance and support. When a member of our human community suffers, solidarity demands that we try and heal the pain, make up the loss or recompense them for their hurt. This can be interpreted as recognising and fulfilling their social rights. These social rights include the right to:

- receive recognition by society of the effects of crime
- receive information regarding their rights and the services available
- have access to health care services
- receive financial compensation where the crime results in a loss of income
- have access to appropriate home security measures

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<sup>3</sup> "While we recognize that the threat of terrorism requires specific measures, we call on all governments to refrain from any excessive steps which would violate fundamental freedoms and undermine legitimate dissent. In pursuing the objective of eradicating terrorism, it is essential that States strictly adhere to their international obligations to uphold human rights and fundamental freedoms." Joint statement by the ODIHR, the UN High Commissioner for Human Rights and the Council of Europe, 29 November 2001

- receive support and protection in the workplace
- receive support and protection in educational establishments
- compensation
- have access to free victim support services
- have their privacy protected

The criminal justice structure may not always facilitate victims' rights. However, victims are people who have been hurt by the conscious and unlawful actions of other people. The criminal law and other aspects of the legal system exist to prevent, punish and deter unlawful behaviour. One of the principles of modern systems of law is that they remove from the individual victim both the responsibility and the right to take remedial or retributive action against alleged offenders. We now recognise, however, that the removal of responsibility from the victim may also have detrimental consequences. Victims may be denied the opportunity to protect themselves from the offender, to exact fair restitution, or to be fully informed about the procedures which will apply in their case, including the application of the law or the factors taken into account when decisions are made. Solidarity with our fellow humans who have been hurt therefore demands that we elaborate, protect and fulfil the rights of individual victims during any legal proceedings relevant to their situation.

All these principles and others can be gleaned from a range of international and regional instruments. Some of the international instruments are:

1. ECHR – Article 2, 13, 14 in particular
2. Article 6 of the International Covenant on Civil and Political Rights  
<http://www2.ohchr.org/english/law/ccpr.htm>
3. The UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions  
<http://www2.ohchr.org/english/law/executions.htm>
4. The Model Protocol for a Legal Investigation of Extra-Legal, Arbitrary and Summary Executions ('Minnesota Protocol') as set out in the UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions  
<http://www1.umn.edu/humanrts/instate/executioninvestigation-91.html>
5. The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power  
<http://www2.ohchr.org/english/law/victims.htm>

6. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

<http://www2.ohchr.org/english/law/remedy.htm>

7. The UN Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity

<http://www2.ohchr.org/english/issues/impunity/index.htm>

One of the more comprehensive and recent regional documents is the European Union Directive on Minimum Standards on the Rights, Support and Protection of Victims of Crime

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-327#BKMD-4>

In general terms, which applies to the whole spectrum of social concerns, especially in a post conflict society, the hypothesis is that developing a human rights based approach can, if not remove disputes, at least resolve them by reference to a commonly understood framework, backed up by international human rights standards and applied in a transparent manner by accountable decision-takers.

The process of decision makers developing a human rights based approach will involve:

1. Establish the framework – based on a) the Human Rights Act 1998 b) any other relevant domestic legislation that implements human rights (including equality) principles and c) other relevant international human rights standards – develop policy, procedures, regulations, guidance etc that clearly establish the rules
2. When a decision is being made which involves the restriction of a right assess whether it is
  - a) **Lawful** – is there a clear legal or regulatory basis for the restriction – usually by reference to the framework established
  - b) In pursuit of a **legitimate** aim e.g. (ECHR) public safety, protection of public order, national security or protection of the rights or freedoms of others
  - c) **Necessary** i.e. it will actually achieve the legitimate aim and there is no other way of doing so
  - d) **Proportionate** – the restriction is no more than absolutely necessary in order to achieve its objective
3. Report fully on the decision-taking process to an appropriate accountability mechanism and publicise it as possible and appropriate

It is respectfully suggested that the Victims and Survivors Commission and the Forum explore the possibility of a human rights based approach as a way of promoting the interests of victims of the conflict.

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## Specific Human Rights Issues in Dealing with the Past

Objective 2 in the Corporate Plan refers to dealing with the past. In this respect there is “hard” (i.e. binding) international and domestic law relating particularly to cases where it is alleged that state actors may have been involved in unlawful killings. Article 2 of the European Convention on Human Rights protects the right to life and puts a procedural obligation on States to investigate when someone has possibly unlawfully lost their life. In the ‘McKerr group of cases’<sup>4</sup> from Northern Ireland the European Court held that in cases involving the use of lethal force by agents of the State an effective investigation in compliance with the requirements of Article 2 must be carried out and set out the minimum requirements for this. It must be:

- ▶ *Independent* – individuals investigating a death must be fully independent of those implicated in a death; this independence must be both practical and hierarchical;
- ▶ *Effective* – an investigation must be able to determine the lawfulness of the actions of those responsible for the death and to lead to the identification, and where appropriate, punishment of those responsible. All reasonable steps must be taken to secure evidence concerning the incident, including eye-witness testimony, forensic evidence, and where appropriate an autopsy;
- ▶ *Sufficiently open to public scrutiny* – there should be a sufficient element of public scrutiny of the investigation or results to secure accountability in practice as well as in theory and the next-of-kin should be involved to the extent necessary to safeguard their legitimate interests;
- ▶ *Prompt and carried out with reasonable expedition* – to maintain public confidence in the maintenance of the rule of law and to prevent any appearance of collusion or tolerance of unlawful acts. Investigations into deaths caused by state agents must be initiated by the state of its own motion and not by the next-of-kin or other concerned parties.

We draw attention to these principles as they must be taken into account in any overall mechanism for dealing with the past. CAJ supports such a general process but insists that it should be human rights compliant. This is perfectly possible in a system based on concepts of transitional justice which does not deploy formal prosecution or punishment but the human rights proofing of such a system cannot be dispensed with.

Please feel free to contact CAJ for any further information or views.

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<sup>4</sup> Jordan v UK [2001] ECHR 327; Kelly & Ors v. UK [2001] ECHR 328; McKerr v. UK [2001] ECHR 329; Shanaghan v. UK [2001] ECHR 330; McShane v. UK [2002] ECHR 469; Finucane v. UK [2003] ECHR 328