

## Full speed ahead in dealing with the past?

**At the time of writing, the financial and welfare elements of the Stormont House Agreement seem to be stalled, with continuing meetings between the parties taking place in the hope of resolving the deadlock. By contrast, it seems that preparations to legislate for the mechanisms designed to “deal with the past” are proceeding at full speed ahead.**

The necessary legislation for the Historical Investigation Unit, the Independent Commission on Information Retrieval and the Oral History Archive will be taken forward at Westminster, but devolved government departments, notably, the Department of Justice, are taking the lead in advising the parliamentary draughtspersons. Officials are producing papers and proposals which are put to the party leaders for their comments. It does not appear at this stage that detailed agreement on the provisions of the legislation is being sought. It does not seem, therefore, that there is any bar on preparatory work for the legislation proceeding.

The legislative timetable is tight. The DOJ is hoping that definitive advice will be passed to the draughtspersons during the spring and they hope to hold consultative workshops during April and May. The legislation is due to be published by June this year and, after formal consultation, it could be introduced into the UK Parliament in September and enacted by Easter 2016. This would pave the way for the institutions to be set up in summer 2016. CAJ is trying to match this timetable in preparing its own views on what is needed in legislation. In close cooperation with academics from QUB and the University of Ulster we are preparing our own advice and we have secured the services of a parliamentary draughtsperson. In this way we will be able to prepare draft legislation which we can feed into the official process as advice and use as a lobbying platform where weaknesses appear in the official drafts. Since the Stormont House Agreement was published we have argued that the detail of the legislation will be crucial; there are many issues of principle and practice which must be tied down in legislation if the mechanisms are to be compliant with international human rights standards.

The Historical Investigation Unit is the central mechanism envisaged by the Agreement and in our view it is vital to the future of Northern Ireland that this process for investigating the past is human rights compliant and effective. Amongst the issues that must be dealt with are a definition of “perpetrator” sufficiently broad to encompass planners and those who knew or should have known about crimes, a Cory-style definition of collusion, independent governance, investigating personnel having no connection with any combatant organisation during the conflict (i.e. state and non-state actors), full, unfettered access to all relevant information (including secret intelligence) and the extent of disclosure in the reports given to families.

In all this work we are liaising closely with other NGOs and legal practitioners. In spite of the tight timetable, it is vitally important that the detail of this legislation is got right. This is the best opportunity for a generation to achieve some sort of justice for the relatives of those killed during the Troubles and so lay the basis for a future, rights based society. CAJ will therefore make this work its top priority in the coming months.

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## **Collusion? Germany and the National Socialist Underground (NSU) cases**

**For over a decade between 1999 and 2011 a cell of the far-right ‘National Socialist Underground’ group (NSU) committed at least ten murders and three nail bombings, mostly targeting Turkish migrants. Two of the cell died in the aftermath of a bungled bank robbery, a third alleged member of the cell who then turned herself in to the police in November 2011, is standing trial along with four other alleged accomplices on lesser charges. CAJ recently attended the trial in Munich as international observers at the invitation of representatives of victims and activists working on the cases. CAJ’s Deputy Director, Daniel Holder, also gave a public lecture in Berlin in relation to addressing the questions of collusion and ethnic bias in the criminal justice system, reflecting on our experiences of the local conflict.**

The NSU cases have commanded considerable attention in Germany and Turkey. A particular area of controversy has been the relationship between the NSU and the German security services running of informants within such groups. The Federal Office for the Protection of the Constitution – the BfV, had infiltrated the NSU with informants, yet its murders continued unabated until the events of 2011. However the BfV took the decision to shred files relating to their NSU informant operations, at the same time in November 2011 as the alleged third member of the NSU cell had handed herself into police. According to one informant the BfV (who rather than the police have primacy for running informants in far-right groups) was encouraged whilst in prison for far right offences, to remain active on the neo-Nazi scene. He published numerous editions of a far right pamphlet which was funded by the handsome payments he received from his handlers. Other human rights issues in relation to the NSU cases included charges of institutional racism against investigative authorities, whom it is alleged showed little interest in following obvious leads to murders being far right killings, but rather had a tendency to erroneously suspect the migrant victims whom may have been involved in organised crime or drugs trafficking.

A German parliamentary inquiry interviewed over 100 witnesses consulted 12,000 files and filed a 1,300 page report. It recommended more diversity within the police and security services and intercultural training. The Inquiry did not fully clarify the issues around the BfV and the role of informants in the NSU, nor made findings of structural or institutional racism. In response a report by the Turkish Community in Germany went much further recommending the disbandment of the BfV, a ban on racial profiling by law enforcement agencies, and the elimination of the ‘large network of informants’ within the far right scene. A critical debate has also ensued in the media, including mainstream media, as to whether the systems of informants should be abolished. Yet much media discussion has also focused on explanations of ‘mistakes’ by the police and security services rather than structural and systemic problems.

The ongoing NSU trial in Munich is one of the biggest Germany has seen in recent years. Testimony is planned from over 600 witnesses in proceedings which began in May 2013. The criminal process in Germany is inquisitorial, with judges leading the questioning, other parties can file motions to call witnesses, but the court will take the decision as to whether they are to be heard. No official record is taken of the proceedings, even the judges have to take their own notes. The trial is held in a vast court room with a packed upper gallery for the public and press. There are five presiding judges, and two alternates; the five defendants and their legal teams, a bank of representatives of the prosecution service, dozens of victims families and their legal representatives are also represented. Yet there is little indication to date that the trial will be able to provide examination and accountability

for state wrongdoing. Investigators will clearly not have access to relevant security service files, as they have been shredded.

The NSU cases touch on numerous human rights themes familiar to Northern Ireland, as well as cases such as that of Steven Lawrence. There are questions about sectarian or racial bias within law enforcement agencies, questions about the role of the security services, and questions about the role of informants. In raising the question of collusion it would be difficult to identify the same type of clear political objective for policies and practices as our own experiences testify to. Yet there are numerous similar questions over the permitted conduct of agents of the state in actions from propaganda to violence which constitute human rights violations, agencies valuing maintaining their informant over and above enforcing the law, and the tendency to cover up wrongdoing rather than conceding accountability. Such matters are clearly ones which stretch well beyond our or Germany's borders, yet for all the current focus on other aspects of covert policing, particularly surveillance, there is little in Council of Europe or UN human rights standards that specifically address the permitted conduct and handling of informants. CAJ will continue to develop a body of work in this area.



Neo-Nazi trio: Uwe Böhnhardt, Uwe Mundlos, Beate Zschäpe

## Beijing+20 conference

**UN State parties met in March for the 59th Commission on the Status of Women – the annual UN policy focus on gender equality and women’s empowerment. This year CSW was a twenty year review of progress globally on the commitments made in the Beijing Declaration and Platform for Action in 1995.**

CSW59 was enormous in scale with 200 government side events in the UN building and 450 NGO side events outside. It was also enormous in the context that it addressed including in coming months, the post 2015 agenda following the Millennium Development Goals, the review of UN Security Council Resolution 1325 and the finalisation of the sustainable development goals.

However, the backdrop to CSW59 was the universal certainty that we are in difficult times. The UK Ambassador made clear his concerns about the roll back globally on women’s rights and asked for NGOs help in securing what he called the ‘progressive agenda’ which is women’s equality.

As it was Beijing+20, there were no agreed conclusions but two important documents formed the outcome.

The first was the political declaration on March 9th. Initially reactions to the document were hopeful despite some weaknesses within it. In the week that followed, as a second document emerged addressing working methods fears of weakness and a rollback on prior positions surfaced. Regional caucuses and the European Women’s Lobby, articulated strong concerns. (<http://www.womenlobby.org/spip.php?article7148&lang=en>)

Agreement was reached on the second document on working methods at the end of week two. It seems that, despite increasingly grave concerns about how CSW could be pared back, an annual CSW with agreed conclusions and emerging issues, a review theme and interactive dialogue has been protected. It is not yet clear how strong the underpinning of NGO involvement is considered to be, for instance, how powerful and effective the statement that NGOs ‘should be encouraged to participate’ will prove. However, the document also determines to strengthen ‘existing opportunities’ for NGOs to contribute to the work of CSW. There may be opportunities to strengthen the effective outworking of the statement on working methods in months to come as there will be a further review in CSW60 to match the working methods to the post 2015 agenda to be adopted in September 2015.

Speaking at the Northern Ireland Women’s European Platform side event at CSW, the Irish Ambassador said the issue of women peace and security ‘can’t be viewed as a women’s issue or an add on component; it must be seen as a central tenet, supporting conflict prevention’. NIWEP’s side event looked at the failure to deliver the Good Friday (and now also Stormont House) Agreement commitment to ‘the full and equal participation of women’ and the consequent non-progression of women’s rights.

It is clear that women’s rights protections in Northern Ireland have fallen short of the recommendations made to the Beijing Conference, particularly in the area of reproductive rights, a childcare strategy, equal representation in decision making and equal access for women and men to welfare benefits.

CSW59 leaves us with plenty of work towards CSW60 in 2016. The CSW meeting affirms a challenging environment for women’s achievement matched with the great threat globally to women’s rights. Examples of the rise in maternal mortality rates, the gendered effects of recent large refugee flows and ongoing threats to the education of women and girls underscore the context to be overcome and the work needed to be done.



## **PFC & RWUK to intervene in 1948**

### **Malaya's massacre case in the Supreme Court**

**In 1948 the Second Battalion of Scots Guards shot and killed 24 civilians at Batang Kali, Selangor, which was part of a British Protected State within the former Federation of Malaya at the time. Batang Kali was a village on a rubber plantation, inhabited by families. For over sixty years relatives of the deceased have argued that the civilians were executed without justification, and the authorities conspired to cover up the truth.**

In April this year relatives of the deceased will take their case to the Supreme Court where it will be argued that Article 2 of the European Convention on Human Rights (ECHR) imposes a duty on the United Kingdom (UK) to commission an independent inquiry or investigation into what had happened following the killing of their relatives. The court will be considering the retrospective effect of the Human Rights Act 1998, and what duties are imposed on a State in respect of events that occurred before the ECHR was ratified. (The UK ratified the ECHR in 1953, five years after the Batang Kali Massacre.)

The Attorney General for Northern Ireland (AG), John Larkin, has been granted permission to make submissions in the case. He argues that the procedural obligation under Article 2 should have a narrow interpretation that focuses on the identification and punishment of those responsible for the death, citing the 2013 ECHR Janowiec decision. He also argues that an Article 2 investigation does not require any form of inquiry whose purpose is simply the recovery of historical truth.

This restrictive interpretation would inhibit a family's legitimate right to the truth about how their loved one died. The Pat Finucane Centre works with over 220 families bereaved during the conflict. Many of these deaths were at the hands of British state actors, with families receiving illegal or sham investigations that would never result in any semblance of justice. PFC has uncovered scores of declassified British government documents outlining the policy of impunity and protection of state forces when they used lethal force. This is not propaganda, this is a fact. Only 4 of the 351 of the deaths caused by the British Army resulted in murder prosecutions. That equates to 0.01%. Of the handful of convicted soldiers, all were released early from their prison sentences and all were readmitted back into the British Army. Included in this shameful statistic are the two soldiers who were found guilty of the murder of 18 year old Peter McBride in September 1992. His murderers were from the same regiment who 44 years earlier killed the 24 unarmed civilians in Batang Kali, the Scots Guards. One of the convicted soldiers went on to serve in Afghanistan.

Families bereaved during the conflict here are aware of the difficulties in securing a prosecution 20, 30 or 40 years after the event. The majority of families are not seeking prosecutions, they are expecting the truth. An unfettered acceptance by the Supreme Court of the AG's submission could be disastrous for families seeking the truth, so PFC and Right's Watch UK (RWUK) had to intervene. Represented by KRW Law, PFC and RWUK petitioned the Supreme Court and asked for permission to make submissions on the importance of Art 2 in determining how conflict related deaths are investigated in this jurisdiction. Our submissions will address our belief that families have a right to know the full circumstances of how these loved ones were killed, in essence families have a fundamental right to the truth.

The events in Malaya were just a few years before the British Army inflicted gross human rights abuses on colonial citizens during the Mau Mau uprising in Kenya. In 2013 the British government paid out almost £20 million in compensation to the victims who were raped and tortured during the 1950s. The Mau Mau and Batang Kali cases epitomise why past human right violations have to be dealt with. They don't go away, victims and the generations that follow don't forget. This hurt and injustice can poison the present.

**Sara Duddy, PFC Caseworker**

## Human Rights Delegation attend meetings in Brussels – March 2015

On Tuesday 3 March NGOs from across Ireland North and South attended a day of meetings in Brussels with MEPs, EU bodies and civil society organisations based in or around the EU headquarters.



Fiona McCauseland (NIWEP), Elizabeth Nelson Gorman (Belfast Feminist Network) and Emma Patterson-Bennett (CAJ) outside the European Parliament Brussels.

Sinn Féin MEP Martina Anderson hosted this delegation to look at how Europe can assist the promotion of human rights across Ireland. The delegation included groups representing the rights of children and young people, older people, women, LGBT, victims, students, Irish language, Travellers and overarching equality, human rights and social justice. The groups from Northern Ireland included, the Children's Law Centre, Age NI, Women's Resource and Development Agency, Rainbow Project, HERE NI, CAJ, Conradh na Gaeilge, Belfast Feminist Network, the Human Rights Consortium, Northern Ireland Women's European Platform and the Northern Ireland Youth Forum.

The delegation took part in a range of discussions and workshops around the role of human rights in the European Union. We met, in the morning session, with the Committee on Civil Liberties, Justice and Home Affairs (LIBE), Amnesty's coordinator on discrimination, the European Association for the Defense of Human Rights (AEDH) and the EU Ombudsman where CAJ were able to raise issues around the conscience clause particularly getting the balance between strongly held religious belief and the rights of others, defining good relations in law and misinterpretation of equality law making some policies 'gender neutral' when it came to women specific issues.

In the afternoon session we met representatives from Age Platform Europe, Intergroup on Children's Rights, the European Youth Forum, EuroChild and someone from the FEMM Committee. This discussion centred a lot around multi agency working, collaborative working across the age and older people's sectors, the need for policies to recognise multiple identities and again some gender focus on the representation of women, women's access to sexual and reproductive rights, human trafficking and criminalising the buying of sex. Age goods, facilities and services for both younger and older people and older people in a health and prison setting were also discussed.

We then met with the Director to the Permanent Secretariat of the European Network of National Human Rights Institutions (NHRI's) Debbie Kohner (previously the CAJ Equality Coordinator), Debbie explained the role of the NHRI's and the commitment they have all made to advancing women's rights in their strategic work plans and she discussed a project she is overseeing on the rights of older people in Europe in the absence of a UN declaration on older people. We also discussed with Debbie the need for a strong and inclusive Bill of Rights and the impact of welfare reform and austerity in a divided society.

We then moved on to a visit to the European Economic and Social Committee (EESC) where Jane Morrice (previous Women's Coalition politician and deputy speaker of the NI Assembly) is the current Vice-President for Communication. Here we discussed the social and economic impact of age and gender discrimination.

Parallel to this afternoon session was a dedicated session on Irish Language looking at dealing with issues that arise and protecting minority languages with representatives from the European Parliament, Traditional minorities, National communities and Languages Intergroup and the European Bureau for lesser used languages.



Human Rights Delegation

## Passing of Barbara McCabe

It was with great sadness that CAJ recently learnt of the death of Barbara McCabe who died peacefully at home on 16 March at the age of 52. Our thoughts and sympathy are very much with her family.

Barbara served on CAJ's executive for almost a decade (between 2001 and 2010). She was Membership Secretary for five of those years. Barbara was a committed human rights activist. She lived her life according to her deep values of fairness and equality. She worked hard to make those values a reality for others. In addition to her volunteer efforts with CAJ, Barbara used her professional opportunities (at the Ulster Peoples College and subsequently at Queens) to encourage community activists to see the importance of human rights to their work on the ground. Her deep commitment to human rights had also shaped her contributions to the Women's Coalition. Part of her commitment to CAJ lay in her desire to give practical effect to the human rights gains made by way of the peace agreement and the negotiations that she had been party to.

Barbara was hard-working and conscientious; she was quiet spoken and modest but also determined to make a difference; she always displayed great integrity, was very warm-hearted and was a marvellous colleague and friend.



## Civil Liberties Diary - February 2015

### 2 February

The Chief Constable reported that legislation to create the Historical Inquiries Unit, a new independent body for investigating Troubles killings, could take between 18 and 24 months to establish. Until the HIU is established, the PSNI's newly-assembled Legacy Investigations Branch will deal with the 900 cases which the HET had not yet examined, will review all the military cases already examined by the HET, review the HET reviews with which families were dissatisfied and prioritise cases with the best evidentiary opportunities.

Civil liberties groups have called for police to reveal details of a network of roadside cameras. The cameras, operated by the police, scan passing vehicles' number plates and check them against information stored in police databases. The PSNI asserts that the cameras are used to enforce the law, promote road safety, probe incidents and patrol roads. They will not report, however, on how many cameras there are or where they are located.

More than 1,000 people took part in a rally opposing the proposed DUP 'conscience clause' bill. Amnesty International's Patrick Corrigan has called the proposed clause a 'discrimination clause'.

### 3 February

The Northern Ireland Human Rights Commission has been granted leave to seek a judicial review of abortion legislation in Northern Ireland. The Human Rights Commission has issued proceedings against the Department of Justice in an attempt to change the law to allow abortion in cases of rape, incest or serious foetal malformation. The Commission contends that the current law breaches rights to freedom from torture and inhuman and degrading treatment and ECHR rights against discrimination and to privacy.

### 10 February

A former loyalist prisoner, Winston Rea, has lost a legal bid to prevent police investigating a murder from obtaining interviews that he gave to the Boston College project. Police believe that he spoke openly about a 1999 murder in the testimony. Rea brought judicial review proceedings, asserting that the move was unlawful and

breached his right to privacy. The claims were rejected by Mr. Justice Treacy.

### 11 February

An employment tribunal in Northern Ireland has determined that obesity qualifies as a disability under the Disability Discrimination Act. This requires employers to protect obese employees from potential discrimination and to make reasonable adjustments to accommodate the employee when necessary.

*Compiled by Elizabeth Super from various newspapers*

## Just News

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