

Poet of conscience: Seamus Heaney

In response to the tragic death of Nobel Laureate Seamus Heaney, we reprint his great poem "The Republic of Conscience," which he first allowed us to use in June 2011 ed. for our 30th anniversary.



picture taken from: <http://www.pen-international.org/what-we-do-2/policy-advocacy/linguistic-rights/seamus-heaney/>

When I landed in the republic of conscience
it was so noiseless when the engines stopped
I could hear a curlew high above the runway.
At immigration, the clerk was an old man
who produced a wallet from his homespun coat
and showed me a photograph of my grandfather.
The woman in customs asked me to declare
the words of our traditional cures and charms
to heal dumbness and avert the evil eye.
No porters. No interpreter. No taxi.
You carried your own burden and very soon
your symptoms of creeping privilege disappeared.

Fog is a dreaded omen there but lightning
spells universal good and parents hang
waddled infants in trees during thunderstorms.
Salt is their precious mineral. And seashells
are held to the ear during births and funerals.
The base of all inks and pigments is seawater.
Their sacred symbol is a stylized boat.
The sail is an ear, the mast a sloping pen,
the hull a mouth-shape, the keel an open eye.
At their inauguration, public leaders
must swear to uphold unwritten law and weep
to atone for their presumption to hold office –
and to affirm their faith that all life sprang
from salt in tears which the sky-god wept
after he dreamt his solitude was endless.

I came back from that frugal republic
with my two arms the one length, the customs
woman having insisted my allowance was myself.
The old man rose and gazed into my face
and said that was official recognition
that I was now a dual citizen.
He therefore desired me when I got home
to consider myself a representative
and to speak on their behalf in my own tongue.
Their embassies, he said, were everywhere
but operated independently
and no ambassador would ever be relieved.

("From the Republic of Conscience", by Seamus Heaney.
Reprinted by permission of the late Seamus Heaney)

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CAJ's Submission to the Haass All-Party Talks

CAJ Calls for a Single Mechanism to Deal with Troubles-related Deaths

CAJ has used the opportunity of the all-party talks chaired by Dr Richard Haass to reappraise its position on investigating Troubles-related deaths, specifically in the light of the UK government's failure to meet its Article 2 (European Convention on Human Rights) obligations. CAJ recognises that there are a range of continuing real and perceived injustices arising out of the conflict that remain to be resolved, including many cases where people were tortured or seriously injured. However, we are convinced that the main obstacle to coming to terms with the past is the almost 3,000 cases involving Troubles-related deaths where the perpetrators were not identified or brought to justice, were inadequately investigated or are otherwise unresolved. If these cases were properly dealt with, then we believe the way would be open to engage with other serious cases and to undertake the many sided truth recovery and reconciliation measures that comprehensively dealing with the past demands.

Our submission to the Haass talks can be found on our website at <http://www.caj.org.uk/contents/1201>. The submission examines why full investigation of troubles-related deaths is vital and why the existing patchwork system is inadequate. The submission comments: *"We now know in some detail...what the weaknesses of the existing mechanisms are. Reversing those criticisms and putting in place structures that would turn those weaknesses into strengths is now a practical possibility and a process which could gain wide political support."* The submission notes that the Article 2 jurisprudence gives political leaders a clear template for the construction of a human rights compliant way of dealing with alleged unlawful state involvement in killings. If such a mechanism were constructed, there are good reasons why it should be applied to all "legacy" cases involving suspicious deaths, including those where the alleged perpetrators are non-state actors. First, the European Court has extended the investigative obligation of the state to suspicious deaths in general. Second, given the complexity of the interacting forces during the conflict and the increasing evidence of penetration of armed groups on all sides by the state security forces, it is arguable that proper investigation of any Troubles-related case requires independence from any of the parties involved. If we tried to separate cases of state involvement from the rest there would, at the very least, be many cases in a grey area between them. Third, to apply the same mechanism to all deaths would prevent any sense of there being a hierarchy of cases or victims, or that one group or another was being scapegoated. Fourth, the fact that society, backed by legislation and state institutions, was prepared to institute a dispassionate, objective, human rights compliant mechanism to examine all Troubles-related deaths would demonstrate a willingness to deal properly with past crimes and so increase public faith in justice and the rule of law.

The submission gives a detailed analysis of what the Article 2 criteria of independence, effectiveness, transparency and promptness would mean, implemented in the Northern Ireland situation. In summary, CAJ proposes the following:

- A new mechanism should be established to review unresolved cases of Troubles-related deaths, investigate any evidential opportunities uncovered, move to prosecution where possible and, only where those avenues are exhausted, provide as full an account as possible of the circumstances surrounding the death;
- The organisation should be established by statute as a fully independent entity with a ring-fenced budget and take over the current responsibilities of the Police Ombudsman, HET and the PSNI in respect of investigating Troubles-related deaths;
- The structure should be a corporation sole or, if collective, all members should be independent, with no attempt to represent the particular political and cultural makeup of Northern Ireland society, and the appointment process should be fully transparent;
- The organisation should have a security-cleared unit, answerable only to its own governing body, with access to all intelligence material held by the PSNI and other agencies, to ensure that all relevant intelligence in every case is provided to investigators;
- The personnel of the organisation should not include any current or former Northern Ireland police officers, nor anyone involved in the past with any armed group involved in the Northern Ireland

conflict, or anyone involved in or connected with a Northern Ireland political party, and it may be necessary to add other criteria to ensure demonstrable independence from any faction in Northern Ireland society;

- The body must have sufficient powers to determine the circumstances and nature of the actions of those responsible for the death and to lead to the identification, and where appropriate, punishment of those responsible;
- There should be regular public reports and continuing liaison with the next-of-kin and families of the deceased.

Flags, Parades and Sectarianism

The brief of the Haass talks was to look at Flags and Parades as well as the past. CAJ took the opportunity also to respond to aspects of the OFMdFM long awaited paper on community cohesion, "Together – Building a United Community." The report is available on our website at: <http://www.caj.org.uk/contents/1200>. The key points are as follows:

Equality and 'Good Relations' Commission

- **Serious inequalities continue and equality is still the issue.** CAJ urges any move to change the Equality Commission into an 'Equality and Good Relations Commission', and amend 'Equality Impact Assessments' to add good relations criterion should consider whether this can be accomplished in a manner which is not retrogressive to equality imperatives and broader international obligations, including those in the Belfast/Good Friday Agreement;
- 'Good relations' needs a definition in law, which draws on and is compatible with international standards, to prevent **abuse of the concept to block equality and rights initiatives**;

Flags, symbols, emblems and 'related matters'

- **CAJ advocates a human rights policy framework be developed and applied consistently in relation to powers to limit political expression in public space and on public property.** In relation to public authorities use of flags and emblems the **Belfast/Good Friday Agreement** committed to a statutory duty, to be enshrined within a **Bill of Rights**, on public authorities for equality of treatment for the identity and ethos of the two main communities. The Human Rights Commission, in accordance with its mandate in the Agreement, advised on a formulation for the duty with a limitation clause and other provisions to protect the rights of other minorities. **CAJ recommends the implementation of the statutory duty and other outstanding commitments from the Agreements.**

Parades and Protests

- CAJ supports decision-making on parades **continuing to be undertaken by an independent body.** CAJ sees **no need to extend existing notification** requirements to other forms of public assembly.
- CAJ recommends the **decision-making criteria on restrictions** under the Public Processions Act are amended to more explicitly reflect **the legitimate aim under the ECHR of protecting the rights of others**, rather than relying on the prevention of disorder criterion.
- CAJ recommends a decision making framework be introduced to ensure that **powers to sanction persons for unnotified processions or counter protests, or related offences, are exercised compatibly with the EHCR** and in a manner consistent with objective criteria.

Definition of sectarianism

CAJ recommends tailoring and adopting a **Council of Europe recommended definition to define sectarianism** in Northern Ireland. This might be:

"Sectarianism" shall mean the belief that a ground such as religion, political opinion, language, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.

Amnesty calls for a human rights approach to the past

Amnesty International is one of the leading global human rights organisations. It has around 3 million supporters, members and activists in some 150 countries and regions throughout the world, including a branch in Northern Ireland. Over the past thirty years, its International Secretariat, based in London, has carried out numerous pieces of research in Northern Ireland on human rights violations here. Its latest report “Northern Ireland: Time to Deal with the Past,” was published this September.

The Amnesty research team visited Northern Ireland six times between March 2012 and July 2013. The Amnesty delegates conducted a total of 47 detailed interviews with relatives of people who died in conflict-related killings in Northern Ireland from all sides of the community. Their purpose was to investigate the current mechanisms for investigating such deaths and to consider whether there should be an alternative.

The report is an exemplary analysis of the situation from a human rights point of view. It starts from the position that the international human rights framework stresses the importance of ensuring justice, truth and reparation in response to violations and abuses. Governments, including the UK, have a duty to investigate killings, suspicious deaths, life-threatening attacks, torture and other ill-treatment, and bring those responsible to justice in a fair trial. The authorities must ensure that victims have access to processes that allow them to find out the truth of what happened and victims must be provided with full and effective reparation to address the harm they have suffered and help them rebuild their lives. This is important in particular for communities emerging from protracted periods of violence and seeking to achieve sustainable peace.

The first part of the report provides an overview of the 30 years of political violence and charts some of the changes following the 1998 Agreement. The report goes on to set out the UK’s obligations to investigate human rights violations; it argues for the importance of such measures, both to individuals and to society as a whole, particularly as Northern Ireland continues to face violence and division.

The second part of the report considers the work of the mechanisms to which victims and families have turned in order to try to establish the truth and secure justice and reparation. It assesses these mechanisms against relevant international human rights law and standards. It concludes that their work has not been consistent or comprehensive. “The narrow and specific remits of these mechanisms have resulted in a patchwork and piecemeal “system” of investigation in Northern Ireland that is not capable of delivering the full truth about the human rights violations and abuses that took place.” In light of these shortcomings, the third part of the report highlights the need for investigations that will effectively examine all aspects of the conflict that involved abuses of human rights by armed groups and violations by the state.

The fourth and final part of the report sets out the case for establishing a single comprehensive mechanism to deal with the past in Northern Ireland. Amnesty argues that “Such a mechanism should provide victims and society as a whole with the truth to the fullest extent possible about violations and abuses and contribute to ensuring justice and reparation. It should be victim-focused and be able to, among other things, investigate all outstanding cases and patterns of abuses and violations, have powers to compel witnesses and documents and be able to develop recommendations aimed at securing full reparation for victims and helping to bring an end to violence and division.” Drawing on Amnesty International’s past experience and research across the globe, the report goes on to outline central principles to help guide the establishment of such a mechanism.

This report is a very welcome addition to the debate on dealing with the past abuses and violations of human rights. It makes an unanswerable case for the UK government to fulfil its obligations under international human rights law and to cease hiding behind a lack of local political consensus. As detailed elsewhere in this issue, CAJ has proposed a single mechanism to investigate all deaths arising out of the conflict. This is a less ambitious, but perhaps more immediately realisable goal and will anyway be a necessary part of any human rights compliant system set up in the future. We would commend this report to anyone who wishes to read an excellent example of how a human rights based approach can deal with some of the most difficult and contentious areas arising out of our conflict-deformed society. See www.amnesty.org.uk for full report.

Another UK violation of the Right to Life...what next?

Over a decade ago the European Court of Human Rights found the UK in violation of Article 2 in the 'McKerr group of cases' and established the principles concerning the duty to investigate unlawful deaths.

In July this year the Court again found the UK in violation of its investigative obligations under Article 2 (the right to life) in relation to historic cases. The Court delivered significant judgments in the cases of *McCaughey & Ors v. UK* and *Hemsworth v. UK* finding the excessive investigative delays in our coronial system to be in violation of Article 2 ECHR. *McCaughey & Ors* relates to the deaths of Martin McCaughey and Dessie Grew who were shot and killed by members of the SAS on the 9th October 1990 and *Hemsworth* relates to the death of Mr. Hemsworth on 1 January 1998 having been assaulted 6 months earlier by the RUC.

CAJ filed a written intervention addressing our concerns in relation to the endemic delays endured generally in these inquests and echo the comments of the Court that:

'... the inquest process itself was not structurally capable throughout the relevant period of time of providing the applicants with access to an investigation which would commence promptly and be conducted with due expedition.'

We and others have consistently raised our concerns about the capacity of the coronial system as it presently stands to discharge its obligations under Article 2 ECHR in historic cases. In particular we strongly support the concurring judgment of Judge Kalaydjieva when she stated:

'Looking at what appear to be ample, but missed, opportunities to do so for more than fifteen or even twenty years, I am not convinced that "the respondent State remains free to choose the means by which it will discharge its legal obligations" under Article 2 of the Convention.' and

'In fact the period of demonstrated, if not deliberate, systematic refusals and failures to undertake timely and adequate investigation and to take all necessary steps to investigate arguable allegations under Articles 2 and 3 seem as a matter of principle to make it possible for at least some agents of the State to benefit from virtual impunity as a result of the passage of time'

Regrettably these judgments are of no great surprise to those familiar with the endemic delays facing 'legacy' inquests within our beleaguered coronial system. As of September 2013 there are currently 38 inquests involving 65 deaths still to be heard before the Coroners Court and at least 27 of these proceedings have yet to be listed for hearing.

Regrettably the 2009 comments of the Northern Ireland Court of Appeal in *Hugh Jordan v. the Senior Coroner* cited by the ECtHR in these two recent judgments have not been acted upon:

'The current state of coronial law is extremely unsatisfactory. It is developing by means of piecemeal and incremental case law. It is marked by an absence of clearly drafted and easily enforceable procedural rules. Its complexity, confusion and inadequacies make the function of a coroner extremely difficult and is called on to apply case law which does not always speak with one voice or consistently.'

'It is not apparent that entirely satisfactory arrangements exist to enable the PSNI to dispassionately perform its functions of assisting the coroner when it has its own interests to further and protect. If nothing else, it is clear from this matter that Northern Ireland coronial law and practice requires a focused and clear review to ensure the avoidance of the procedural difficulties that have arisen in this inquest.'

We continue to submit that urgent structural changes are required to prevent an ongoing breach of Article 2 and 3 in these historic inquests.

CAJ Asks European Committee of Ministers to Enforce Article 2 Obligations on the UK

CAJ has written to the Committee of Ministers (CM), which has the responsibility to oversee and enforce judgements of the European Court of Human Rights, to ask it to take measures to ensure that the UK fulfils its obligations to properly investigate unlawful deaths. The submission covers the three cases from 2001 in which CAJ acted for the families, the HET, the Police Ombudsman and Inquests. The following is an edited summary of those failures.

UK failure to implement judgments delivered over a decade ago

CAJ acted in three of the “McKerr group of cases” before the European Court of Human Rights and we repeat our request in November 2013 that the Ministers’ Deputies give these cases their **urgent consideration** as we understand that they have not deliberated nor pronounced on this group of Northern Ireland cases since 2009.

Over a decade has elapsed since these original judgments were delivered and in July 2013 the Court has again found the UK government in violation of its procedural obligations under Article 2 as they relate to inquests in cases concerning killings by the security forces in Northern Ireland in *McCaughey & Ors v. UK and Hemsworth v. UK*. CAJ is concerned that there are still significant delays, deficiencies and obstruction of the implementation of these judgments.

CAJ calls upon the Committee of Ministers to invoke its power under Rule 11 to issue infringement proceedings against the UK government for its failure to abide by the final judgments in these cases.

General Measures

Historical Enquiries Team (HET)

In a joint submission in February 2012 CAJ and the Pat Finucane Centre formally requested the reopening of scrutiny by the CM of General Measures relating to the HET. In 2009 the CM recalled the establishment of the HET with the task of *‘providing a thorough and independent reappraisal of unresolved cases, with the aim of identifying and exploring any evidential opportunities that exist, and, if evidential opportunities are identified, to proceed with the investigation of the crime’*. The Committee decided to close its examination of the issue on the grounds that the HET had *‘the structure and capacities to allow it to finalise its work’*.

In our previous submissions CAJ expressed concerns at a number of developments which significantly undermined the HET’s capacity to carry out the work it had been deemed capable of. Changes to the structure, policy framework and practices of the HET plus serious concerns about limitations on its role in state involvement cases were highlighted in detail in our February 2012 CM submission. This included specific concerns about aspects of the HET process in relation to cases where the deaths involved actions by British Army personnel and had originally been subject to investigation by the Royal Military Police (the ‘RMP cases’).

An inspection report by Her Majesty’s Inspector of Constabulary (HMIC) has now been published. The report identified and verified many of the concerns which had been raised about HET in our previous submissions and provided detailed further evidence as to how the HET had been operating. One of the main conclusions of the HMIC Inspection report is that its approach to the RMP cases was unlawful due to non-compliance with the European Convention. There are a range of other findings and recommendations. Whilst welcoming these findings, even if fully implemented, CAJ does not regard the recommendations in the HMIC report as sufficient to make the HET fit for purpose to discharge its current remit. Even with significant reform CAJ does not believe it is possible for the HET to meet the necessary requirements of independence and impartiality in relation to state involvement cases.

In light of the HMIC finding that the HET had been acting incompatibly with the requirements of Article 2, CAJ reiterates our request to the CM for the reopening of scrutiny by the Committee of Ministers of General Measures relating to the HET.

Office of the Police Ombudsman for Northern Ireland (OPONI)

CAJ welcomed the reform that has taken place within the Police Ombudsman's office since the resignation of the Second Police Ombudsman. However, there are still a number of outstanding legislative changes to the Ombudsman's powers to ensure the Office can fully discharge its remit which are yet to be taken forward. These changes were highlighted in the first Police Ombudsman's 2007 Statutory Five Year Review of powers report.

The Review addresses matters crucial to being able to conduct effective conflict-related investigations. Among its recommendations are:

- Extending the Police Ombudsman's remit to deal with 'all civilians operating with police in a policing capacity';
- Empowering OPONI to compel former or retired officers to submit to witness interview and provide documentation, in grave or exceptional matters;
- Review and amendment of RUC conduct regulations to enable investigation of deaths directly or indirectly attributable to police, regardless if there was a previous police investigation;

The Department of Justice is currently refusing to implement these recommendations because there is no political consensus on them. However, the UK Government has the international obligation and should act.

CAJ called upon the Committee to continue to supervise the Police Ombudsman as a General Measure to ensure its effectiveness in preventing new violations. We asked the Committee to request that the UK address the full implementation of the Five Year Review of powers and ascertain if it is considering using its powers to direct the devolved Department of Justice to ensure recommendations required to ensure Article 2 compliance are implemented.

Inquests

We reminded the Ministers' Deputies of CAJ's long standing concerns, as outlined in our earlier submissions, surrounding the capacity of the coronial system in Northern Ireland to deal with 'legacy' inquests. The recent damning judgments delivered by the Court in the cases of *McCaughey & Ors v. UK* and *Hemsworth v. UK* have found the excessive investigative delays in our coronial system to be in violation of Article 2 ECHR and the Court has directed:

'that the Government take, as a matter of some priority, all necessary and appropriate measures to ensure, the present case and in similar cases concerning killing by the security forces in Northern Ireland where inquests are pending, that the procedural requirements of Article 2 are complied with expeditiously.'

We submit that urgent structural changes are required to prevent an ongoing breach of Article 2 and 3 in these historic inquests. We have previously outlined our concerns about the legislative framework for inquests within Northern Ireland and believe that wider legislative reforms are essential to ensure that the inquest system functions properly in accordance with its obligations under the ECHR.

The comments of Judge Kalaydjieva, in *Hemsworth v. UK* which were echoed in *McCaughey & Ors v. UK* also apply to the large number of historic cases which the UK has failed to expeditiously investigate including the individual measures currently under the scrutiny of the CM:

'...the period of demonstrated, if not deliberate, systematic refusals and failures to undertake timely and adequate investigation and to take all necessary steps to investigate arguable allegations under Article 2 and 3 seem as a matter of principle to make it possible for at least some agents of the State to benefit from virtual impunity as a result of the passage of time'

Furthermore, we are concerned to learn that, despite the Article 2 requirement of practical and hierarchical independence, four out of six personnel working in PSNI's Legacy Support Unit are former members of Special Branch or RUC intelligence and have served directly with 92 serving and former police officers who could tentatively be called as witnesses at the 'Stalker Sampson' inquests.

Given this concerning discovery we seek confirmation that the Coroners Service and PSNI are robustly discharging its duty to ensure that the process of disclosure complies with the Article 2 obligations engaged in these inquests.

Civil Liberties Diary - August

Aug 1

Due to the parades commission decision on banning 3 Ligoniel lodges from marching along a disputed section of the Crumlin Road on the return leg of the July 12 parade, daily protests by loyalists have taken place since July 12 at the junction of Twaddell Avenue and Crumlin Road.

Aug 5

A team of PSNI officers fluent in the Irish language took to the streets of Derry/Londonderry during the all-Ireland fleadh. The fleadh will mark the first major public event where a PSNI patrol has put the Irish language to use.

Aug 6

A preliminary inquest hearing into the death of Francis Rowntree (11) has established a witness's name but have yet to trace his whereabouts. The witness, who was 14 years old at the time could shed new light on the death of the schoolboy shot in 1972 by a Royal Anglian Regiment soldier in West Belfast by a rubber bullet. The child's death was among 14 controversial Troubles killings for which Attorney General John Larkin had ordered new inquests

The Pat Finucane Centre (PFC) has uncovered documents revealing the whereabouts of a secret internment interrogation centre at Ballykelly, Co. Derry in 1971. According to a spokesperson, the whereabouts of the centre was deliberately withheld from two inquiries and from the European Court of Human Rights.

Aug 8

A second inquest has been ordered by Attorney General John Larkin QC, into the deaths of 10 victims of an IRA massacre, near the village of Kingsmill, south Armagh in 1976. He made the direction after studying a report by the HET which discovered intelligence linked to the killings that claimed that an unidentified ex-British soldier was involved.

Aug 21

The High Court in Belfast has ordered the Ministry of Defence to hand over documents relating to the SAS killings of eight IRA men in Loughgall, Co. Armagh, 26 years ago. The case for the disclosure of the files was brought by families of three of the men who died. They want the papers to help their lawyers to prepare a civil action against the MoD over what they have called the "unlawful killings".

"Women's Rights – what still needs doing?" is the theme of the summer school in Carlingford, held every year to honour the work, vision and courage of Dr Con McCluskey and his wife, the late councillor Patricia McCluskey of Dungannon. In the early 1960s, they founded the Homeless Citizens' League, and later the Campaign for Social Justice, the forerunners of the Civil Rights Movement. Participants will discuss the remaining obstacles to full gender equality in society and how they are to be removed.

Aug 22

A report "Equality Can't Wait" into housing in North Belfast was launched by Participation and the Practice of Rights project (PPR). The report highlights how a series

of ministerial, statutory and council failures have compounded religious inequality in housing in the north Belfast Area. The report states 76% of people in housing stress in that area are Catholics and only 22% Protestants.

Aug 23

A public inquiry into historic institutional child abuse is to send a specialist team to Australia after almost 60 alleged victims or witnesses now living in the country made contact. Around 110 children were sent to Australia from residential facilities in Northern Ireland between 1947 and 1956 as part of a controversial UK government child migration policy. The statutory probe was set up by the Executive to investigate institutions run by the state and church and also those owned by the private sector or voluntary bodies from 1922 to 1995. At least 35 institutions have been identified as sites of alleged abuse.

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Just News

Just News welcomes readers' news, views and comments.

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