

Rollback report published

To mark International Human Rights Day (10th December) CAJ, in collaboration with the Transitional Justice Institute, University of Ulster and the Human Rights Centre Queens University Belfast launched a conference report: 'Mapping the Rollback: Human Rights Provisions of the Belfast/Good Friday Agreement 15 Years On.' The conference report covers CAJ's recently produced 'Mapping the Rollback' matrix and the varied inputs of conference speakers regarding the human rights commitments 15 years on from the Belfast / Good Friday Agreement.

The conference was held back in April in Queen's University's Great Hall. 150 people attended and a total of 22 presentations were made that day. These presentations have been collated into the report.

Increasing concern has been expressed by CAJ and other human rights organisations that there has been and continues to be persistent attempts at a 'rollback' by the state, or elements within its institutions, of the human rights provisions of the various Agreements that make up our peace settlement. This rollback includes commitments made as part of the settlement which have never been implemented and areas where institutional and policy gains were made, which are now being undermined.

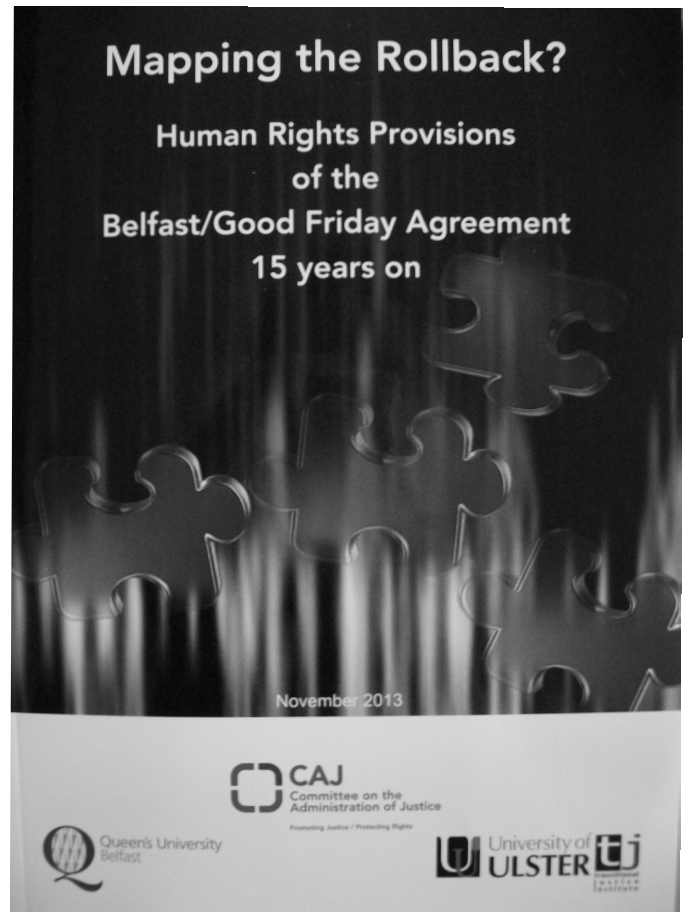
Speaking before the launch, Brian Gormally, CAJ's Director said:

"If the Agreement had been properly implemented, especially the passing of a Bill of Rights, many of the contentious issues that the Haass process is now wrestling with would have been dealt with."

Alan McBride of the Wave Trauma Centre and a victim himself argued:

"The fact that a Bill of Rights has still not been implemented must be seen as a failure. It could have become the corner stone that our society is built upon, one that has rights and responsibilities at its core – the Bill could be something we are immensely proud of, it could be taught in schools and it would be above party politics."

contd...



Mapping the Rollback? Conference Report

Contents

Rollback report published	1-2
OSCE launches new 'human rights in counter terrorism investigations' manual	3
Equality Can't Wait – Equality Denied	4
CAJ's Annual Report – the Highlights	5-7
Civil Liberties Diary-October	8

Patricia McKeown, Regional Secretary of UNISON, argued that civil society has done much of the heavy lifting in the peace process and may have to again:

"It's the people's peace process but perhaps we are guilty of handing too much over to the politicians. It's time to take it back."

The report covers commitments that were not implemented which include:

- a Bill of Rights
- an Irish Language Act
- the introduction of an anti-poverty strategy
- full implementation of statutory equality duties, and
- the repeal of emergency law

Some commitments like the 'right of women to full and equal political participation' and to supporting young people from areas affected by the conflict have never had a delivery mechanism to take them forward.

The report also argues that there has been a regression in the delivery of victims' services, a drift away from the principle of tackling inequality on the basis of objective need, and little attempt to remove employment barriers for ex-prisoners. The slow pace of criminal justice reform, especially in the prison system, has dashed many of the hopes raised fifteen years ago.

Policing also has seen regression from the Patten blueprint - most notably in the 2007 transfer of the most controversial area ('national security' covert policing) away from the PSNI and all the post-Patten oversight bodies to the Security Service, MI5. The undermining of the independence of a key peace settlement institution – the Police Ombudsman – during the term of the second postholder has since been reversed but demonstrates the dangers of rollback.

There is a current threat by some British politicians to withdraw from the European Convention on Human Rights which the 1998 Agreement guaranteed would be incorporated into domestic law – as it was in the Human Rights Act. That would be a devastating blow to the protection of human rights and to our peace process. The Irish Government has also failed to fully implement some of its commitments under the Agreement.

Also launched on the day was a 'Rollback Monitor' as part of the RightsNI blog.

The report is available on CAJ's website www.caj.org.uk

OSCE launches new ‘Human Rights in Counter-Terrorism Investigations’ manual

Organisation for Security and Cooperation in Europe (OSCE) has launched a new practical manual for law enforcement officers on “Human Rights in Counter-Terrorism Investigations”. CAJ were among a small number of civil society organisations from across OSCE member states who participated, at OSCE’s invitation, in a launch and discussion seminar on the above manual held in Vienna last month. CAJ had earlier met with the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in the development stage of the manual which, produced in partnership with the OSCE Strategic Police Matters Unit, provides practical guidance for law enforcement policy and training on conducting counter-terrorism operations in a human rights compliant matter.

OSCE have stated “This manual focuses on the investigation process and has been produced following requests from law enforcement officers working in the field for a practical tool to aid their work. It is designed to help improve democratic policing practice across the OSCE and to assist law enforcement practitioners in strengthening their compliance with OSCE commitments and international human rights standards in the investigation of terrorism-related crimes.” Part 1 of the manual deals with intelligence gathering and special investigative techniques including surveillance and the use of agents and informants; Part 2 covers dealing with witnesses, victims and crime scenes; Part 3 with the exercise of arrest, detention and questioning powers; and Part 4 with accountability mechanisms and the security and integrity of investigations.

The main participants, in addition to civil society and international organizations, in the launch seminar were the OSCE member state governments (including the UK) through their ambassadors to the OSCE.

One predominant recurring topic was the ‘temptation’ of law enforcement officials to engage in the ill treatment or torture of detainees in order to ‘progress’ counter terrorism investigations. There was considerable discussion as to the range of reasons this is absolutely prohibited in human rights law, stemming beyond such conduct being morally reprehensible, to how it fuels conflict, thwarts effective investigations and remedies, leads the extraction of ultimately false information and to miscarriages of justice. These matters concur with our own experiences in the Northern Ireland conflict including general ill-treatment to induce confessions of detainees as well as the use of the ‘five techniques’ which were to be the subject of the Ireland v UK case.

Some of the most interesting presentations came from experienced police investigators themselves in relation to modern (and human rights compliant) interview techniques and models, which involved gaining confidence to drawing out as much information as possible from suspects to test competing hypothesis. By contrast one speaker noted that when he had commenced as a police detective in the 1970s no specific training had been provided. He confirmed that officers were expected to learn ‘on the job’ from other officers, and that then ‘successful’ interviewers were often thought to be simply those who induced the most confessions.

Those speaking included a detective responsible for investigating suspect Anders Behring Breivik who was subsequently convicted of 77 murders for in far-right shootings and bombings in Norway in 2011. Breivik has claimed he was commander of transnational far-right network. Despite the claim of a rate (and ultimately false) ‘ticking-time bomb’ scenario, the existence from the outset of a confession, and the considerable pressure of the case police had not deviated from tried and tested and legitimate interview techniques. This ultimately maximised the effective remedy for victims, including their rights to know as much as possible about what had happened to their loved ones.

As the so-called ‘war on terror’ has demonstrated however the use of torture and ill treatment of detainees in ‘counter-terrorism’ scenarios is far from a thing of the past even in states otherwise regarded as democratic. Given as such practices fuel conflict and future conflict the question remains as to whether states and their agents will ever learn. All steps to ensure they do so are to be welcomed.

The OSCE manual is available free online at: <http://www.osce.org/odihr/108930>

Equality Can't Wait – Equality Denied

In August 2013, PPR released the 'Equality Can't Wait' report, detailing a decade of failings by a range of government bodies to tackle religious inequality in housing, impacting the Catholic community in North Belfast. Both the Northern Ireland Children's Commissioner, and the UN Special Rapporteur on the Right to Adequate Housing have visited residents in North Belfast. In October, President of Ireland, Michael D. Higgins acclaimed the work of the residents to capture, monitor and challenge their housing conditions in a speech to the Law Society of Ireland.

The response from the Department for Social Development response is in stark contrast:
"The department does not accept your statement that there is religious inequality in social housing."

'Equality Can't Wait' featured two Forewords – one from Thomas Hammarberg, former Council of Europe Commissioner for Human Rights who visited the Seven Towers flats in the New Lodge in December 2011, and one from the residents themselves who said *'we are the human face of the facts and figures in this report'*. They include Sammy Jo and her three year old son who have been housed in a North Belfast Housing Executive temporary hostel for almost 2 years. The Economy Seven heating system found in her accommodation is expensive to run, ineffective and worsens her son's asthma.

Also included is 'S'. S [anonymised] and her daughter were allocated a place in a North Belfast Housing Executive hostel after queuing outside the offices when she was made homeless. She was told it was temporary but two years later is still there. Half of her income goes on heating her home – S's daughter constantly has chest infections and colds from the dry heating system and is worried the cramped space affects her daughter's development. She has been told she is 135th on the list for housing.

Shortly the residents we work with on the ground will launch their human rights indicators and benchmarks which represent the modest changes they require for their right to adequate housing to be realized on the ground. They will pursue their campaign both locally and internationally. Following her visit to Belfast UN Special Rapporteur on the Right to Adequate Housing Ms. Raquel Rolnik stated:

"Other population groups, highlighted by the Committee on Economic, Social and Cultural Rights in 2009, which continue to face inadequate access to affordable housing are Catholics in Northern Ireland, specifically in North Belfast..... I remain concerned that full equality has not been achieved yet."

As Ms. Rolnik referenced, the UN has engaged with the issue of housing in Northern Ireland before. In 2009, the UN Committee on Economic, Social and Cultural Rights named Catholics in North Belfast as a group of particular concern, despite a £133 million programme designed to address it.



New lodge petition, picture by PPR

However that same year, the NIHE removed the very measures which recognised not only religious inequality, but also the specific housing needs of Travellers and those in rural areas, by ending their policy of 'ring-fencing' new build units to meet their particular needs. 2009 was also the year that the method of calculating housing inequality in North Belfast changed, from a method that shows that Catholics in North Belfast made up 73% of those in housing stress, to one that puts the figure at 57%.

Next year the UK government will once again be examined in front of the Committee on Economic, Social and Cultural Rights which came out so strongly on this issue in 2009. In advance of that, the focus must be on how organisations can ensure that the voices of those who are more accustomed to being ignored by local bodies than visited by international experts, are heard and acted upon.

Nicola Browne, Participation and the Practice on Rights (PPR)

CAJ's Annual Report – the Highlights

Introduction

Northern Ireland is a society that was born in conflict and CAJ was born in 1981, at the height of the most recent phase of violence. CAJ's continuing role is to work to protect and promote human rights, especially those that are central to the peace process. The *"unfinished business"* left over from the peace agreements is of major significance, locally and internationally. The major gap is the UK government's failure to legislate for a Bill of Rights for Northern Ireland but there are other failures to carry out peace process commitments. These failures have a tendency to weaken the stability of the peace settlement especially in such areas as accountability for *"national security"* policing and prison reform.

The legacy of the conflict is still with us. There is no comprehensive method of dealing with past abuses and unsolved crimes in Northern Ireland. Amongst other things, The UK state is seriously in breach of its European Convention Article 2 responsibilities to protect the Right to Life in respect of cases where state involvement in unlawful killing is alleged. This is part of a developing *"culture of impunity"* which appears to spread through the security and military establishment in the UK and which is a major human rights issue internationally.

CAJ is convinced of the need to *"create a culture of human rights"* or, in other words, to undertake the task of bringing human rights norms into practical, everyday use. The protection of social, economic and cultural rights has particular importance in Northern Ireland, especially in relation to equality.

In all these areas, CAJ's method of work is consistent. We start from the international human rights standards to which the UK is a party. We analyse the relevant instruments and draw out the implications for the particular area we are studying. We then examine both relevant domestic law and actual social practice – the reality on the ground. We then analyse where law and practice fall down in terms of the highest standards and make recommendations to redress the situation. We may adopt this method in a research report, a submission, an article in the media or a speech, but the structure is the same: standards, actual practice and recommendations for change.

This Year

This year has seen no let up in the number of serious issues arising. Over the last year or two, we and other human rights activists have become increasingly concerned about what we have called the *"rollback"* from the human rights commitments made and the expectations raised in the various Agreements that went to make our peace settlement. This concept refers both to unfulfilled commitments, such as the Bill of Rights, and to partial reversal of reforms, such as the weakening of police accountability. We are not pointing to any great conspiracy but to the perception that those elements in society who resist a human rights based approach are growing in confidence and power, at the same time as many of the grassroots communities who may be alienated from the political elite are turning to human rights as a means of progress. A major conference, *"Mapping the Rollback? Human Rights Provision of the Belfast Good Friday Agreement 15 years on"* was held in April. The Report of the conference was published in December during the Human Rights Festival.

CAJ's job is to resist and reverse this rollback and to work to develop a culture of human rights amongst public authorities, civil society and alienated communities. We do not see that work as merely sitting back and criticising. If we are genuine about creating a culture of human rights, understood as making a rights-based approach to the standard framework for decision taking and problem resolution, we are obliged to propose solutions as well as pointing out gaps and abuses. So we have begun to suggest models and to work with others to develop frameworks which might not be perfect but which attempt to make human rights into practical tools. The body of the Annual Report records how we have tried to do that during the past twelve months.

Police accountability

We made two major interventions on police accountability – one of the most important areas of the Patten reforms. The first was a major research report on the “accountability gap” created by giving MI5 primacy in the area of covert “national security” policing. The second was a series of briefings and discussions with politicians about the proposal to have the new National Crime Agency operating here as a body of constables with no accountability to the major oversight mechanism, the Policing Board. We argued that it was perfectly feasible for the NCA to operate in Northern Ireland as an advisory and co-ordinating body but without police powers. The legislative consent motion necessary to give the NCA police powers was blocked in the Executive and it is operating without them.

Another policing related research report, *“Still Part of Life Here? A report on the use and misuse of stop and search/question powers in Northern Ireland,”* was published online in January. It has been discussed widely. The subsequent Independent Reviewer’s report to Parliament referenced the research as raising significant issues for the PSNI and the Police Ombudsman, the NIO quickly moved to consult on and publish a code of practice for the JSA powers (a recommendation from the report, no code had been issued since 2007) and the Policing Board restarted their own Thematic Review of stop and search which was published in November. A number of meetings were held with senior officers of the PSNI and further discussions are arranged.

Freedom of assembly

Issues around the exercise of the freedom of assembly and expression and the policing of public order have been dramatised on the streets all year. This year too, we had the extraordinary policing exercise that was deemed necessary to protect the world leaders at the G8 summit in County Fermanagh. It is CAJ’s view that all the issues raised are best regarded and analysed through the lens of a human rights based approach. We have taken a number of initiatives to improve our own and other stakeholders’ appreciation of what that might mean in practice.

We have continued training and discussions with Loyalists, some of whom have been involved in flag protests. At the request of the ICTU, CAJ monitored the G8 protests – the first time we had done this in more than a decade. We inputted our views on flags and protests to the Haass multi-party talks process, we had two discussions with the Parades Commission and we began a public order research project.

Combating impunity

CAJ has addressed the issue of combating impunity on a number of fronts over the past year. We participated in the discussions following the highly critical Inspector of Constabulary report into the Historical Enquiry Team arguing that it could not be sufficiently independent to mount effective investigations into cases involving state personnel. We developed and put into the Haass process our view that a comprehensive mechanism to investigate all unresolved conflict-related deaths was possible and realistic.

CAJ still has carriage of a number of cases that engage the UK Government’s Article 2 obligations in respect of investigating potentially unlawful killings. In some cases legal proceedings such as inquests are ongoing or anticipated and there has been considerable contact with HET and the Police Ombudsman. The continuing lack of a resolution in these cases is harrowing for the families and requires considerable commitment of time by CAJ.

Threats to justice

A close watch needs to be kept on legislation and administrative practice in order to monitor any emerging threat to or weakness in the administration of justice. We identified and took action on some of these practices this year. The Justice and Security Act 2013 was finally passed extending the concept of Closed Material Procedures to a range of civil proceedings. We opposed this “*secret justice*” legislation, we believe it is bound to be subject to legal challenge and we await its first use in Northern Ireland.

As part of a very wide-ranging Anti-Social Behaviour, Crime and Policing Bill, the UK Government has attempted to introduce a new definition of “*miscarriage of justice*.” This would require persons to prove their innocence to the standard of beyond reasonable doubt before an earlier conviction would be regarded as a miscarriage of justice and appropriate compensation paid. This is designed to overturn a 2011 Supreme Court decision, partly based on a Northern Ireland case, which established a lower but more realistic threshold. CAJ engaged in significant lobbying on this issue and liaised with Liberty on the text of an amendment that would re-state the Supreme Court position. We submitted a briefing to MPs and raised it with our own Minister of Justice. At the time of writing the legislative process continues but we are hopeful of broad support for the amendment.

CAJ has been granted leave to pursue a Judicial Review of the decision of the Parole Commissioners to deny us the right to observe a Parole Hearing when requested by the defendant and the policy that excludes such observers.

Equality

CAJ has a deep and continuing interest in equality, both because of its inherent importance and because the commitments to an equal society were a fundamental part of the peace settlement. In our view, equality is an integral and indispensable part of a human rights-based approach and is a basic bottom line for Northern Ireland society.

CAJ co-convenes the Equality Coalition with the trade union UNISON. In autumn, the Equality Coalition agreed the following four thematic priorities for the year ahead: protecting strategic equality policy, austerity, privatisation and objective need, strategic housing policy and welfare reform. The coalition is developing a dedicated website at www.equalitycoalition.net.

In June we published “*Unequal Relations*,” a report of research on the relation between the equality duty and the “*good relations*” duty for public authorities. The research found significant inconsistencies in the way the Equality Commission interprets and advises public authorities on the duties, both with the provisions of the Agreement and the human rights framework and across different themes (case studies are included in the report examining advice on flag flying, the Irish language and socio-economic rights, particularly housing).

Throughout this period, CAJ and the Equality Coalition continued to engage with NGOs, trade unions and other organisations in opposition to the welfare reform process. Although on this occasion it seems that we will not have stopped welfare reform in its tracks, this process has proved valuable in pointing out the extent to which equality can be an approach to promoting social and economic rights.

CAJ exchanged correspondence with the head of the civil service/OFMdFM in relation to the Executive’s duty to adopt an anti poverty strategy based on objective need. It is clear –as set out in our mapping the rollback paper – that no such strategy is presently ‘*adopted*’.

CAJ’s Annual Report is available on www.caj.org.uk

Civil Liberties Diary - October

9 October

The Committee on the Administration of Justice has launched a High Court challenge after being denied access to the Northern Ireland Parole Commissioners' proceedings regarding the release of Marian Price, arguing that its attendance at the hearings would have 'ensured an additional layer of transparency and accountability'.

15 October

Health Minister Edwin Poots and Attorney General John Larkin have brought a case to prevent publication of legal advice on the decision to apply a lifetime ban on gay men donating blood in Northern Ireland.

The Northern Ireland Executive is considering a change to the powers of the Attorney General, John Larkin, after a report indicated conflicts between the Attorney General's role as a government advisor and his responsibility to protect the public interest.

Relatives of the Claudy bombing victims are bringing legal writs against the Catholic Church, NIO and PSNI, in order to compel the bodies to disclose all relevant information held in relation to the case.

24 October

170 prisoners in Maghaberry Prison hold the keys to their own cell and may leave their cells under their own power during 'unlock' times. The Prison Service stated that the scheme was designed to protect the privacy of the prisoners.

The UK Supreme Court overturned an appeal by Edwin Poots which challenged a decision allowing adoption by same-sex and unmarried couples.

25 October

The PSNI used stop-and-search powers more than 10,657 times (under anti-terror legislation) and 20,800 times (under PACE) in 2012.

29 October

A report by the Criminal Justice Inspectorate found that detection rates of domestic violence have dropped over the past three years, despite a 10 per cent increase in the number of domestic abuses cases recorded during that time. The report recommended a fully inspection on how the PSNI handles domestic violence.

30 October

Health Minister Edwin Poots has reported that he will not disclose the legal advice received over draft abortion guidelines.

31 October

The Secretary of State, Theresa Villers, has called on the Loyal Peaceful Protestors to reconsider their plans for a mass rally in Belfast on November 30, in response to concerns regarding the economic damage caused by the demonstrations.

On the same day, Richard Haass reported that loyalist parades and flag protests have cost traders £234 million in the past year.

*Compiled by Elizabeth Super
from various newspapers*

Just News

Just News welcomes readers' news, views and comments.

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Correspondence should be addressed to the Editor, **Fionnuala Ní Aoláin**, CAJ Ltd.

2nd Floor, Sturgen Building
9-15 Queen Street

Belfast

BT1 6EA

Phone: (028) 9031 6000

Text Phone: 077 0348 6949

Fax: (028) 9031 4583

Email: info@caj.org.uk

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