

## Haass on the Past – a special edition of Just News containing the views of CAJ and other NGOs

The Haass process has come and gone. There was no agreement amongst the parties on flags and parading – these matters, together with discussion on a Bill of Rights, have been put to a suggested Commission on Identity, Culture and Tradition. CAJ will be following up its submissions to the Multi-Party Group chaired by Richard Haass on these matters.

However, as it turned out, much of the discussion in the months leading to the publication of the Report as well as the Report itself was taken up with proposals on the past. There was no final agreement amongst the parties, but it seems that they got further on this issue than the rest. Many human rights activists were surprised at how far-reaching the proposals were and the extent to which human rights considerations underpinned them. We print below summaries of the response of CAJ and some other leading NGOs.

While we may differ on some details, all these NGOs – some working with many victims of the troubles – are united in welcoming the proposals as a workable model which should be progressed. In fact, at a recent meeting, we agreed that these proposals should be the starting point of future political discussions. The blueprint provided by Haass may not be perfect but there should be no regression from what appears to have been nearly agreed. We jointly plead with all parties to address these matters with the utmost urgency.

### Contending with the Past – CAJ says: “Draft the legislation and we can talk about details”

#### Introduction

In general, CAJ regards this section of the Proposed Agreement as a careful, sensitive and sensible contribution to the debate on dealing with the past. We also believe that, subject to a number of caveats, it could be compliant with human rights standards.

Elements of the proposals are similar to those put forward in CAJ's submission to the Haass process on dealing with the past which can be found here:

<http://www.caj.org.uk/contents/1201>.

#### Support for Victims and Survivors

Correctly, the first substantive part of this section deals with support for victims and survivors. It demands a range of high quality services for those that need them and suggests making available “advocate-counsellors” to work in the interest of an individual victim, providing support and helping each individual understand and request relevant services.

The Proposed Agreement endorses the principle of choice in accessing services and supports **cont...**

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the existence both of the Victims and Survivors Service (VSS) and the range of non-governmental victim support organisations.

However, the document affirms critical reports pertaining to the treatment of some victims by the VSS and urges the Victims Commissioner, currently carrying out an independent assessment of the VSS, to propose specific guidelines and best practices for the provision of services to victims and survivors.

Ironically, amidst the sensitive appreciation of victims' needs, the definition of whom is being talked about could not be agreed. In the context of this fundamental disagreement, CAJ believes there is no justification whatsoever for moving from the inclusive definition contained in the *Victims and Survivors Order 2006*.

### Acknowledging Past Acts

This part is a general request to those engaged in the conflict, both individuals and organisations, to acknowledge their role through an *"unqualified acceptance of responsibility."* No mechanism is suggested for this process and it is not seen as having any legal effect. It could, however, help create an atmosphere of generosity that could assist the more formal processes suggested later.

### Justice

The Proposed Agreement implicitly recognises the failures of current institutions, especially the HET, and proposes an alternative to elements of them. It excludes inquiries which *"will remain the purview of governments,"* (British and Irish) and inquests, on the grounds that the European Court has established specific requirements for them and it would require a change in its jurisprudence to include them.

### Historical Investigations Unit

The most important substantive proposal made in the document is the establishment of a Historical Investigations Unit (HIU). This would take over the historic investigations roles of the HET and OPONI, though not of the PSNI. The main features of this proposal are:

- It would be established under the supervision of the Policing Board (NIPB)
- It would be staffed by persons with *"relevant investigative experience and expertise"* but who *"can be shown to have no conflicts of interest relevant to the sensitive subject matter"*
- The HIU would have *"investigative powers and arrangements identical to those of the PSNI. Such powers will enable it to conduct investigations that are Article 2 compliant"*
- Families would have a choice to engage or not with the HIU
- Outstanding HET and OPONI cases would be combined into a single chronological list
- Where people were severely injured in a case where deaths also occurred, a more general report on the circumstances would be given to all those injured in the event; after all cases involving deaths were dealt with, the HIU would conduct reviews and investigations into cases involving severe injuries, *"if resources permit"*
- *"In order to avoid confusion and duplication of effort, investigations underway by the PSNI will be completed by the PSNI"*

The HIU bears a close resemblance to the single *Article 2* compliant investigative mechanism proposed by CAJ in its submission to the Haass talks (see link on page one).

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However, we would question why historic cases being pursued by the PSNI are excluded from its purview. We need to hear further justification for this view. CAJ supports the extension of the brief of the HIU to cases involving severe injury.

In CAJ's original submission to the Haass process, we broke down the concept of independence, required in investigations by Article 2 of the European Convention, into a number of headings, starting with governance. We argued: *"The person or body in charge of the investigation must be capable of acting independently without control or interference, direct or indirect, from government, any agency of the state, any political party or any other interest group in society."* The Proposed Agreement suggests the Policing Board as the effective governing body for the HIU. We have a number of detailed questions that follow from this proposal but, in principle, we believe that the Policing Board has operated as an independent overseer of the PSNI and we believe that it is capable of being an independent governing body in terms of *Article 2* standards.

An important issue we raised in our submission, in relation to independence, was access to intelligence. The processes for accessing PSNI intelligence on historic cases are deeply problematic and the HMIC Report into the HET questioned the fact that ex-RUC Special Branch officers were amongst the *"gatekeepers"* of that intelligence and recommended *"some independent procedure for guaranteeing that all relevant intelligence in every case is made available for the purposes of review, to ensure compliance with the Article 2 standard."* There is no mention of this vitally important recommendation in the Proposed Agreement and without such an *"independent procedure"* the practical independence of any new body would be seriously compromised. In our original submission we said that *"no investigators should be ex-RUC or PSNI officers, or have been involved in any armed group, or be involved in any political party with an interest in Northern Ireland and other criteria about connection with Northern Ireland may need to be developed."* The Proposed Agreement recognises the possibility of conflict of interest but does not go into detail about how it might be avoided.

In summary, with regard to independence, we would need to see more detail but, subject to a number of caveats, we accept that the Policing Board is an independent body and the proposed mechanism is capable of achieving *Article 2* compliance in terms of independence.

It appears that the HIU would have full police powers and would be able to undertake effective investigations. It would be helpful if there was a duty on serving and ex-members of the security forces to cooperate with the new body and a similar obligation on public authorities. The proposals on publication of procedures and on relations with families seem to CAJ, in principle, to fulfil the obligations around transparency.

### **Independent Commission for Information Retrieval (ICIR)**

The Proposed Agreement goes into some detail about a suggested new mechanism that would encourage any person or organisation with information about cases involving death or serious injury to bring it forward and offer victims and families the ability to request a report on their case. The body would have no separate investigative function but would use open source material and past and future files from investigative bodies. The body could also *"assess patterns"* of violent acts in relation to discernible policies or strategies of state and non-state actors. This is a form of information retrieval that could contribute to truth recovery which CAJ recognises as an important part of post-conflict reconciliation.

The document proposes a three level immunity for those making statements to the new mechanism. First, the statements cannot amount to self-incrimination. Second, the statements cannot be used as evidence against any third party named. Third, the *"raw information"* provided to ICIR *"will not be disclosed under any circumstances"* and, specifically, ICIR *"will never inform law enforcement"* of any claimed links with other people.

This third level, together with the offer of anonymity to those providing information, implies that the information giving process will actually be entirely secret. CAJ would like further legal analysis on the implications of this third level of immunity.

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However, CAJ sees no problem from a human rights compliance point of view with the first two levels of limited immunity. In the pursuit of the overall aim of social reconciliation and the eradication of political violence – which would solidify the rule of law and a rights based society – such a level of suspension of the normal criminal justice process is completely permissible.

Looking at the assessment of patterns, CAJ notes that the ICIR will be tasked with analysing themes and policies but with no power to compel the production of documents or other information or to carry out investigations. Again, we think further legal analysis on this point would be useful.

## Conclusion

CAJ believes that this part of the Proposed Agreement is a good basis on which to construct a comprehensive mechanism for dealing with the past. We have raised a number of concerns about matters which could only be addressed in the necessary detail on the basis of draft legislation. Though we recognise it is for the Parties to decide whether and how to move this process forward, we believe that this part of the Proposed Agreement forms a sufficient basis on which to move to draft legislation and we urge this course on Assembly Members.

## Rights Watch (UK)



**Rights Watch (UK) made submissions to the Panel of Parties (Haass) and to the Proposed Agreement. Both our submissions were concerned with that part of the Haass mandate concerned with Dealing with the Past in Northern Ireland subsequently discussed in the Proposed Agreement as Contending with the Past (see [www.rwuk.org](http://www.rwuk.org)).**

We support in principle the suggestions made in the Proposed Agreement regarding Contending with the Past in Northern Ireland. We agree that victims should be the core concern in working through the legacy of the conflict. We suggest that instead of continuing to contest the definition of a victim of the conflict in Northern Ireland a statutory definition of a victim exists in *The Victims and Survivors (Northern Ireland) Order 2006*.

We consider the proposed Historical Investigations Unit (HIU) to be a workable model of investigation into the conflict related legacy cases including the cases of survivors of the conflict. We suggest that the HIU should be legislated for at Westminster and not at Stormont because of the central issue of collusion involving state agents. In addition we suggest that regarding state held intelligence the HIU must have powers to access intelligence without restriction and to compel evidence from state agents. Given robust independence the HIU could be a human rights compliant mechanism of investigation discharging the UK's procedural obligations under *Article 2* of the European Convention on Human Rights and related Strasbourg jurisprudence following an *Article 2* (the right to life) violation and by extension a violation of *Article 3* (prohibition of torture, inhuman and degrading treatment).

Regarding the proposed Independent Commission for Information Retrieval (ICIR) we agree with the underlying rationale for this truth seeking mechanism and the provision of a civic space to acknowledge past acts in the process of transitional justice arrangements. However, information and evidence obtained in this way would to all intents and purposes be held in a closed archive. Its use and value in terms of justice is limited given the proposed arrangements. The proposal would need considerable work to assess its use value in contributing to Contending with the Past.

We concur that both statutory inquiries and inquests in Northern Ireland should continue within the existing jurisdictional arrangements. We maintain our demand for statutory inquiries into the *Ballymurphy Massacre 1971*, the murder of *Patrick Finucane 1989* and the *Omagh Bombing 1998*. If the HIU model was legislated there would need to be consideration of the intersection between these inquiry and inquest arrangements and the scope of the HIU.

## Relatives for Justice



Post the report by Her Majesty's Inspectorate of Constabulary (HMIC) on the Historical Enquiries Team (HET) RFJ's membership gave us a three-fold mandate; that the HET should go – the Police Service of NI (PSNI) should not investigate the past – and we lobby, campaign and engage in strategic litigation opportunities for the creation of an *Article 2* mechanism.

RFJ engaged the Haass/O'Sullivan consultation and made a comprehensive written submission. We also supported and empowered families to make submissions. The proposed Historical Investigations Unit (HIU) when measured met the general terms of the three objectives. In principle this unit would see the HET go and the intended spirit would ensure that the PSNI would not investigate the past. In a similar vein we take the view that the PSNI should not be allowed to investigate the past. The unit would be operationally independent with full police powers. Our advocacy goal has been to ensure that any investigation unit would be *Article 2* compliant.

The creation of the HIU would also see the retrospective legacy remit of the Office of the Police Ombudsman NI (OPONI) move to the unit. For us too this made sense. There has been much commentary and politics surrounding the proposals but when all is said and done there still remains a legal duty on the State to investigate in a compliant way direct State killings including where allegations and evidence of collusion exists. With that obligation foremost RFJ also took into account the task of the Policing Board in implementing the recommendations of the HMIC concerning the HET. For RFJ the HET and the PSNI cannot meet an *Article 2* compliant process on investigating the past. It is precisely because they have '*policed*' the past that we find ourselves constantly litigating or having the Policing Board force a situation in which the HMIC were called in.

This form of political control within the PSNI by vested interests is equally having a negative effect on civic policing. Eames/Bradley recognised this too as have these latest proposals. Even if the proposals are not implemented in full the Policing Board, politicians and both governments should at the very least measure the value and potential of the HIU in meeting legal obligations and the needs of families. In the absence of political agreement RFJ believes that's where the focus needs to be.

*Relatives for Justice, January 2014*

## Amnesty International



New Year's Eve 2013 marked the end of several months of intense negotiations between the five executive parties in Northern Ireland on a number of contentious issues with unfortunately no final agreement being reached. Amnesty International's focus during the negotiations has been on the proposals concerning the past and we have been calling on politicians to agree new mechanisms to investigate past human rights violations and abuses that are capable of securing truth and justice for victims to the fullest extent possible.

Despite their inability to reach complete consensus, Amnesty International believes that the Haass talks have been an important step towards dealing with the past in Northern Ireland and it is now vital that work continues to bring them to fruition. Indeed one of our key concerns now is that the progress that has been achieved by the parties and the Haass team towards agreeing a new approach is not lost. As the introduction to the draft proposed Agreement emphasises, the time to rise to the challenge of the past is now, as "*Northern Ireland does not have the luxury of putting off this difficult, but potentially transformative, task any longer*"; this is a sentiment with which we agree wholeheartedly.

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### So what of the proposals themselves?

Our focus is on the proposed establishment of two new mechanisms: the Historical Investigations Unit, intended to secure human rights compliant investigations into deaths and serious injuries that occurred during the decades of violence; and the Independent Commission for Information Retrieval, which will serve as an additional truth recovery vehicle for the past.

Our view is that these two mechanisms represent a solid basis on which progress can and should now be made to introduce legislation that will finally establish an effective investigatory mechanism for Northern Ireland that is capable of securing a measure of truth and justice for victims. This is not to say that the proposals are perfect, there remain questions and clarifications that will need to be addressed.

But they are a positive development and have the real potential to help secure truth and justice for victims of human rights violations and abuses. What is crucial is that human rights standards and the voices of victims guide the development of these proposals and help make them a reality. Too many victims have been failed for too long by existing mechanisms established to investigate the past. That failure of political will must now end.

*Amnesty International, January 2014*

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## Pat Finucane Centre



**To Haass or not to Haass. Before answering that question it is important to reflect on where we might be heading with investigative mechanisms. It is reasonable to assume that whatever emerges following implementation of the HMIC recommendations will be even worse than the flawed mechanism that went before. The 'restructured' HET that will be unveiled in February/March will be even less independent of the PSNI and will be incapable of gaining the confidence of bereaved families.**

This is inevitable given HMIC Recommendation 15 which will see 'live' investigations automatically being passed back to the PSNI. It's also inevitable given that there were many within the PSNI, Ministry of Defence, the Retired Police Officers Association and political unionism who always regarded even the limited and piecemeal casework that was carried out as potentially dangerous and contrary to the dominant narrative of what happened Northern Ireland over 40 years.

In its submission to Haass the Northern Ireland Retired Police Officers' Association (NIRPOA) warns that a future HET should avoid becoming a '*handmaiden*' for '*republican pressure groups*' and then goes on to suggest that there may be no need for any mechanism.

One thing is certain. The HMIC, which for decades turned a blind eye to everything that was wrong with the RUC, was never going to facilitate an *Article 2* compliant independent mechanism with full police powers. Meanwhile those individuals who did do a professional and independent job in the HET have since resigned. The die is cast.

In this context the Haass proposal for an Historical Investigation Unit (HIU) offers a real opportunity to families to re-engage in a process that has the potential to deliver. There are of course ifs and buts. Who would be appointed Director, what games will Special Branch play with files in the interim, why should families who have been let down by the HET go to the back of the queue and what about victims outside of the North? These are important issues that will need to be resolved. Notwithstanding the above the proposed HIU could, for the first time in our history, deliver on the type of independent investigative mechanism that families and wider society deserves. ALL families would benefit and political unionism should stop hiding behind the so-called '*innocent victims*' lobby that seeks to create a false and inherently sectarian hierarchy of victims. It's time for the two governments to re-engage.

*Pat Finucane Centre, February 2014*

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# Celebrating and Protecting Human Rights

The second annual Northern Ireland Human Rights Festival took place between the 9-14th December 2013. The festival, centred around International Human Rights Day on the 10th December was an opportunity for a diversity of organisations to host human rights themed public events across Northern Ireland. The festival began in 2012 as a mechanism to try and coordinate the various activities and events that traditionally take place in Northern Ireland around International Human Rights Day.

The festival continued to grow in 2013 with contributions from a diverse range of organisations across Northern Ireland. These organisations came together to provide an exciting range of events reflecting the theme of, *"Celebrating and Protecting Human Rights"*.

The festival began with the launch of the CAJ/QUB/TJI *'Mapping the Rollback'* Report which provided a broader context on the status of human rights in Northern Ireland fifteen years after the Agreement and proved to be a good scene setter for the rest of the festival events. There were 24 public events in total ranging from a variety of talks, debates and discussions covering issues such as the privatisation of the NHS, the portrayal of ethnic minorities in the media, the continued need for a Bill of Rights for Northern Ireland, achieving equality in health and social care for older people and a celebration of CEDAW.

The festival was also about reaching out to the general public and getting them interested in human rights issues, and with the aid of photography exhibitions, poetry readings from Belfast's own Poet Laureate Sinéad Morrissey, Cabaret nights, film screenings, bespoke workshops, anti-fracking activism and pub quizzes, there was certainly something for everyone.

As the festival continues to develop it will be exciting to see what 2014 will bring. If any organisation is interested in holding events as part of the 2014 NI Human Rights Festival then they should contact Helen Flynn [Helen@billofrightsnri.org](mailto:Helen@billofrightsnri.org)



*Human Rights Cabaret,*  
*picture by Human Rights Consortium*



*Fiona McCausland, Helen Flynn and Brian Gormally,*  
*picture by Human Rights Consortium*



*"Mapping the Rollback?" report being launched,*  
*picture by Human Rights Consortium*



*Amnesty group's 'Write for Rights' action,*  
*picture by Human Rights Consortium*

# Civil Liberties Diary - November/December 2013

## 20 November

Northern Ireland Attorney General John Larkin called for an end to all prosecutions, inquests and public inquiries into Troubles-related offences carried out before the 1998 signing of the Good Friday Agreement.

## 26 November

Nearly 400 individuals have contacted the Historical Institutional Abuse Inquiry to be witnesses at the hearings, which will begin in 2014.

## 27 November

Belfast County Court determined that the Northern Whig acted unlawfully when prohibiting a family from entering because they were wearing poppies.

## 29 November

The Northern Ireland Secretary of State, Theresa Villiers, has refused a request to back a probe into the Enniskillen bombing, stating that a public inquiry would not best serve the public interest. She has instead concluded that the HET should finish its examination of the case and the PSNI should be allowed to follow any leads resulting from the examination.

## 3 December

The Smithwick Tribunal concluded that the Garda colluded with the IRA in the 1989 murders of RUC officers Harry Breen and Bob Buchanan. Justice Smithwick found that, while there was no direct evidence of collusion, there was at least one individual within the Garda working with the IRA.

## 11 December

In response to several bomb threats in Belfast City Centre, 1,784 cars have been stopped at 323 police checkpoints in the city.

## 12 December

The Supreme Court rejected Minister for Health Edwin Poots's appeal. This final rejection lifted the ban on adoption by gay and unmarried couples and such couples may now apply to adopt children in Northern Ireland.

## 17 December

The Criminal Justice Inspection Report concluded that further work is needed to reform the youth justice system in Northern Ireland.

## 19 December

The University of Ulster Coleraine cut off electricity, water and toilet facilities, as well as blocked two fire exits, in an attempt to remove protesters from the senior common room. Students were protesting against the threat that the Common Room was to be closed and turned into meeting rooms instead.

The Policing Board reported it spent approximately £1 million per week to police parades from 1 April to 31 October 2013, costing a total of £26 million. This figure does not include additional cost of policing the flag protests.

*Compiled by Elizabeth Super from various newspapers*

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