

Upcoming Seminar-conference: **Covert Policing and Ensuring Accountability: Ten Years on from the Cory Collusion Inquiry Reports, where now?**

CAJ in partnership with University of Ulster Transitional Justice Institute (TJI) will be hosting this seminar on Tuesday 1 July 2014, at Ulster University's Belfast Campus. The event will explore the themes of covert policing, particularly the running of agents/informants and use of intelligence, and address contemporary and historic questions of human rights compliance as well as developing a framework to render such practices lawful and accountable.

The discussion will cover perspectives on past covert policing policies in Northern Ireland, and the extent to which they facilitated 'collusion'; it will highlight the powers of current accountability bodies including the Police Ombudsman and Policing Board, the effectiveness of the post-Cory public inquiries and explore questions of legal-ethical frameworks to regulate the use and conduct of informants and agents; the seminar will hear of the recent covert policing controversies in London and Germany, relating to the Stephen Lawrence family and 'National Socialist Underground' cases respectively; the seminar will also cover the growing issue of the use of intelligence evidence in 'exceptional' court proceedings and the growth of the 'national security' doctrine, which places many aspects of covert policing, past and present, beyond the reach of accountability bodies.

A first panel focusing on '*Collusion and Covert Policing in NI, where now?*' will be chaired by **Dr Louise Mallinder of TJI**, speakers: **Paul O'Connor, Pat Finucane Centre** on the subject of '*Deadly intelligence and the rule of law*' focusing on what archival material from DeSilva backwards reveals about the modus operandi of covert operations during the conflict; **Daniel Holder, CAJ** will contrast '*counter-insurgency*' and '*law enforcement*' models of covert policing and speak to the development of a human rights and accountability framework for covert policing in NI; and **Dr Cheryl Lawther of the School of Sociology at Queen's University** and author of '*Truth, Denial and Transition: Northern Ireland and the Contested Past*' will speak on the theme of '*Official and Security Force Perspectives on Collusion*'.

Session II will focus on the subject of '*Covert policing and accountability, where now?*' with panel: **Suresh Grover**, Director of **The Monitoring Group (UK)** and former co-ordinator of the **Stephen Lawrence Family Campaign**, focusing on the undercover operations of the Metropolitan Police in particular in relation to the Lawrence family; **Fionnuala Ní Aoláin, Associate Director and Professor TJI** on "*The Intersection of Intelligence with Exceptional Courts, Military Commissions and Procedural Exceptionalism*" and **Carsten Illius**, a lawyer representing victims in the NSU cases in Germany.

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Session III, chaired by **Brian Gormally of CAJ** will focus on oversight mechanisms and will hear from **Dr Michael Maguire, Police Ombudsman for Northern Ireland**, on the role of the office in overseeing covert policing; **Yasmine Ahmed, the director of Rights Watch UK (nee British Irish Rights Watch)** on joint research with CAJ on the outworkings of the public inquiries from the Cory Collusion Reports; and **Ryan Feeney** Independent Member the **Northern Ireland Policing Board** and member of its Performance Committee, will speak on the Board's work in relation to covert policing.

To book a place RSVP CAJ: by Friday 20th June e-mail events@caj.org.uk or phone Liz McAleer on 028 90316000. There is no charge for attending, please inform us of any specific needs such as access requirements.

Review of “The State of Democracy, Human Rights and the Rule of Law in Europe”, a Report by the Secretary General of the Council of Europe



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

The Secretary General of the Council of Europe (CoE) has recently issued the report, “The State of Democracy, Human Rights and the Rule of Law in Europe”. Drafted upon the request of the Committee of Ministers, the goal of the Report is to assess the CoE's ability to assist member states in efforts to comply with the European Convention on Human Rights (ECHR), among other relevant treaties. Within the Report, there is concern that member states are not fulfilling the tenets of the ECHR. For member states not in compliance, the Council calls for assurances to the standards of the Convention and offers recommendations for compliance while also acknowledging significant challenges.

Overall, the Report highlights three main challenges to human rights, democracy and the rule of law in Europe; these include monitoring, assistance to member states, and standard setting.

The Report is divided into six chapters:

- *Respect for Physical Integrity and Human Dignity*
- *Justice and the Rule of Law*
- *Democracy*
- *Social Rights*
- *Non-discrimination and Equality*
- *The Council of Europe and Unresolved Conflict Zones*

Part One addresses the death penalty, torture and ill treatment, trafficking, and the rights of migrants and asylum seekers. Lauding the majority of member states for keeping the CoE death penalty-free, the Report

suggests that addressing torture and inadequate treatment of those detained by law enforcement (especially migrants and asylum seekers) continues to be a challenge. Part Two addresses justice and rule of law focusing not only on the judiciary, but also on corruption and money laundering. Regarding the judiciary, the Report expresses concern that not only might there be executive interference in the judiciary's function but that there might also be a lack of public trust in the judiciary, as well as judicial corruption.

On the topic of democracy within Part Three, the Report covers the challenges to political freedoms within member states, including the freedom of expression and violence against journalists. The Report also contends that the freedom to assemble has been threatened. Recalling Articles 10 and 11 of ECHR, the Report reminds member states of their treaty obligations on this topic. Concerning elections, the Report argues that there is a lack of independence and transparency within elections, among other issues. Additionally, it makes special note of gender imbalances and the limited participation of minorities. Lastly, democratic institutions and culture are listed as being endangered in the midst of, among other things, a lack of genuine political competition, the growing influence of extremist and populist agendas, and the declining participation in democratic processes among citizens. Concern was also voiced that only one third of member states have adopted the CoE Charter on Education for Democratic Citizenship and Human Rights Education (2010).

Social rights in the form of dignity, participation and solidarity are taken up in Part Four. The Report stresses that austerity policies have contributed to undermining social rights, that in turn breach the European Social Charter resulting in cuts to social security benefits and social assistance. In a similar vein, Part Five confronts non-discrimination and equality, touching upon ethnic discrimination, national minorities, the Roma, gender equality, sexual orientation and gender identity, and children's rights. Other forms of discrimination addressed include religious discrimination, xenophobia, age discrimination, and disability.

Lastly, Part Six discusses the CoE and unresolved conflict zones. The Report discloses that nearly three million people in Europe are not protected in the manner (which may be of particular relevance to Northern Ireland) that is outlined within the ECHR. Thus, the Report calls upon the CoE to play a more significant role in affording rights to these populations, primarily through the use of confidence-building activities that promote reconciliation.

Many issues raised within the Report apply directly to the Northern Ireland context. Most significantly is the advocacy for the adoption of a Bill of Rights for Northern Ireland per the Belfast (Good Friday) Agreement 1998 that has been up for discussion for more than a decade in Northern Ireland.

As for other issues raised in the Report, the situation of detention and migrants/asylum seekers is a concern that has been voiced through the Northern Ireland Human Rights Commission (NIHRC) that issued its own report (2013) on the Larne House Short Term Holding Facility that was submitted to the United Nations Committee Against Torture. According to that report, detained individuals have not been provided the same rights as those in long-term facilities. NIHRC has also raised issue with the ways in which detainees are kept, a concern that is echoed within the CoE Report.

Within the realm of non-discrimination and equality, the concerns of the LGBT population in Northern Ireland are also at the fore. Marriage equality, among other concerns, has been widely debated, especially in light of positive trends in other parts of the United Kingdom.

Lastly, concerning unresolved conflict zones, direct mention was not made to Northern Ireland within the Report. However, the recent impasse reached during the Haass-O'Sullivan talks on flags, parades and the legacy of the Troubles continues to dominate much of the news in the region. While Northern Ireland differs considerably from the conflict zones cited in the CoE Report, stressing respect for human rights and rule of law is certainly applicable across member states.

Review written by Stephanie Chaban, Transitional Justice Institute

Healing Through Remembering



So often, when we discuss the past, or even when we discuss the present, we end up shouting about the past. As time goes on, as the darkest days of our conflict become more distant, the shouting is carried on by those who didn't live through those days. Where does our 'shouting', our 'not listening' and our failure to deal with the issues leave the next generation? Maybe the biggest challenge we face in remembering is listening, listening to what others are shouting, because until we all feel heard we will all keep shouting.

Through the work of Healing through Remembering we have produced suggested Core Values and Principles for dealing with the past, and one of them is about 'Not Forgetting'. The challenge is not to attempt to forget but rather to find an appropriate way to remember.

A way to do that is critical to find, helping individuals, groups and society collectively to know the overall story of what happened to us and so enable us to build a more peaceful society, for now and for the future.

The current debate in Northern Ireland seems to still have more of the 'shouting' and the 'not listening'. Separate groups and organisations propose more and more options designed to enable us to deal with our past. The Consultative Group on the Past, The Panel of the Parties (*Haass/ O'Sullivan*), the Commission for Victims and Survivors, previous secretaries of state and various commentators all offer us a tapestry of mechanisms that bring us back to the past instead of dealing with it inclusively.

The issues become politicised either by those who use the options to construct a narrative justifying their actions or by those who demand a whataboutery of emerging truths so that their constituency is not disadvantaged. Politics are the modern-day grave-robbers, using the dead to make the job of building peace more akin to Camus' Myth of Sisyphus who was happy with his struggle and condemned to repeat the task forever. In this cycle of accusation and counteraccusation our peaceful future remains elusive and less achievable with each passing year.

It is not surprising that we do not trust one another. It is less surprising that our organisation that has been working on these issues for many years and has developed the methodology to resolve the issues has become caught in a funding environment reflective of the political one.

Healing through Remembering knows what works. We know that these issues cannot be resolved by politicians alone, by victims and survivors alone or by combatant groups alone. Civic society has a crucial role to play in this. We need safe space to listen to each other and not to sit and wonder what 'they' gain from what 'they' are suggesting. Inclusive conversations where no voices are absent are the key to listening and agreeing what can be achieved for the future. Healing through Remembering provide that safe space. We facilitate those difficult conversations and we know what is possible. It is and has always been our desire to go out of business. We want to do so naturally and in the knowledge that an appropriate way to remember has been achieved that does not bring us back to the past but lights the way for our future. Help put us out of business by working together to achieve that goal.

***Dawn Purvis,
Healing Through Remembering Chair***

CAJ on the World Stage – Conference in the Kyrgyz Republic on police accountability and preventing torture and ill treatment of detainees

From the 28-30 April CAJ participated in a three day conference which, building on international learning, sought to address the issues of ending the use of torture and ill-treatment against persons in police custody in the Kyrgyz Republic. The conference, entitled “*Preventing Torture, Investigation, Accountability and Monitoring*” was organised in the capital city Bishkek as part of an EU funded project implemented by the Tian Shan Policy Centre of the American University of Central Asia the Ludwig Boltzmann Institute of Human Rights. The event was co-organised with the Open Society Justice Initiative, the UN OHCHR and the Kyrgyz civil society Coalition Against Torture. The OSCE human rights office also participated, along with broader representatives of both civil society and the criminal justice and law enforcement bodies in Kyrgyzstan.

CAJ Deputy Director Daniel Holder spoke as part of a panel of international experts, alongside the current Assistant Commissioner for Police Complaints in Jamaica and former Ontario police complaints commissioner. CAJ’s input focused on the local experience of preventing torture and ill treatment of detainees, reflecting on what had been done to tackle practices, including those exposed in the interstate case of *Ireland v the UK*. There was focus on the importance of independent accountability bodies to deal with complaints of ill-treatment in police custody, such as the NI example of the Police Ombudsman’s Office, along with the impact of the introduction of audio and video recording of interrogations. Also discussed were progressing police interview techniques and criminal justice practices which moved away from focusing on extracting confessions towards other evidence gathering methodologies. Our funded invitation to participate in the conference came on the back of the researchers visiting Belfast and a previous engagement with them by former CAJ policing programme officer Dr. Mick Beyers.

The Kyrgyz Republic has a population of around 5 million, borders China, Uzbekistan, Tajikistan and Kazakhstan and was formerly part of the USSR. There is a level of political and institution will in the country and its legislature to tackle ill-treatment yet successive UN reports have identified serious problems. The UN Subcommittee on the Prevention of Torture (SPT) recently finding, notwithstanding some positive measures, torture and ill-treatment being prevalent in the country, primarily driven by ‘alarming’ structural and systemic problems which included impunity and corruption but also the reliance of law enforcement bodies on confessions and the lack of effective oversight of their work.



CAJ Deputy Director Daniel Holder spoke at
Conference in the Kyrgyz Republic

Enforcing Equality



The Equality Coalition held a training seminar on Friday 4 April in UNISON for members of the Equality Coalition and other NGOs, community groups, voluntary organisations, policy officers and trade unionists. The session looked at how best to make complaints to ensure District Councils, Health Trusts, Education Boards, the Housing Executive, and Government Departments etc abide by equality law and the commitments in their 'equality schemes.'

Public bodies have recently adopted 'second generation' equality schemes, and Equality Coalition members invested a lot of time engaging with public authorities in the development of the schemes. As well as written comments, over 150 public authorities attended a series of eight Equality Coalition events to discuss their draft equality schemes. Now that the public authorities are at implementation stage the Equality Coalition members were keen to make sure that the equality duty is actually put into practice and the schemes are abided by. The schemes contain commitments and duties on public authorities to promote equality of opportunity, as well as duties to monitor inequalities and to 'screen' and impact assess new or changed policies for the impact they have on equality across community background, ethnicity, gender, disability, sexual orientation and other grounds.

The Equality Coalition was conscious that whilst there are many examples of good practice there are also unfortunately examples of public authorities acting in a way which worsens inequalities or some are generally avoiding their duties to properly screen and equality impact assess policies, even on major policies such as current cuts to health services, welfare reform and housing policy.

Whilst it is free and usually relatively straightforward to issue a complaint that a public authority has breached its scheme, in practice the complaints mechanism, which leads to an investigation by the public body and ultimately the Equality Commission, is not used very often, meaning most breaches of the Equality Schemes are never redressed.

Thus the aim of this seminar was twofold: first to highlight successful strategies a number of groups have had in challenging inequalities in general, this included presentations from:

- Ciarán Moynagh, Partner McLernon Moynagh Solicitors on Freedom of Information Requests and Appeals: *'Rainbow Project's Challenge to the DHSSPS blood ban advice.'*;
- Nicola Browne Participation and the Practice of Rights Project (PPR): *'Mobilising Support for Equality: the Lower Shankill Regeneration Board'*; and
- Bernadette McAliskey South Tyrone Empowerment Programme: *'From Naming to Realisation: a journey in progress for Travellers.'*

Secondly the seminar was aimed to provide information specifically on how to enforce the commitments in 'equality schemes.' This was delivered in the second session of the day with a presentation by Daniel Holder, CAJ, co-convenor of the Equality Coalition on how to use the equality scheme complaints procedure and Eileen Laverty Head of Strategic Enforcement, Equality Commission for Northern Ireland discussed the complaints process at the Commission.

The seminar finished off with the attendees splitting into smaller groups and discussing how to complain using some case studies as examples, these included Transforming your Care, Welfare Reform, Delivering Social Change for Children and Young People, housing policy and lack of an over arching sexual orientation strategy. The groups then fed back to an expert panel made up from Equality Coalition members, Patricia McKeown

co-convenor of the Equality Coalition, Daniel Holder, Jonathan Swallow Equality Consultant and Eileen Lavery from the ECNI. The panel members were again able to share good practice and learnings for the groups. The seminar itself got people thinking about how to enforce the equality schemes but also it provided a good networking opportunity for people to discuss pertinent equality breaches with like minded groups and to gain knowledge from talking to the experts on next steps.



The Equality Coalition may run this event again in collaboration with members in the North West.

Publication of Equality Coalition commissioned expert paper “Sectarianism in Northern Ireland: time for a definition in law”

In light of the plans, as part of the NI Executive’s community relations strategy, to include a definition of sectarianism in local law for the first time, the Equality Coalition has published an expert paper on the subject, written by Dr Robbie McVeigh. The paper sets the context and provides commentary on a number of potential definitions of sectarianism.



Dr. Robbie McVeigh

The Equality Coalition is a broad alliance of NGOs and trade unions whose members cover all the equality groups listed in section 75 of the Northern Ireland Act 1998, as well as other equality strands. The Equality Coalition is Co-Convened by CAJ and UNISON, was founded in 1996, and now has over 80 members, many of which are umbrella organisations and continues to provide a forum for unity between all sectors when working for equality.

A draft of Dr McVeigh’s paper was presented and considered at a roundtable discussion last month, held under the Chatham House rule. This was attended by researchers, academics, public bodies, anti-sectarianism practitioners, Equality Coalition members, the Community Relations Council, and Equality and Human Rights Commissions. The roundtable was chaired by Patricia McKeown of UNISON, with Professor Bill Rolston acting as a Rapporteur. The discussion fed into the final version of the paper.

The Executive’s ‘Together: Building a United Community’ strategy was published in May 2013 and the strategy envisages that, provided there is consensus on wording, a definition of sectarianism will be included in the legislation emerging from the strategy. The public consultation on this is likely to take place shortly and the paper is produced as a contribution to this debate. The strategy itself does contain a definition of sectarianism for the strategy document itself. However this, given as it was derived from a proposed provision in the Justice Act 2011 which dealt with sectarian chanting at sports matches rather than sectarianism per se, is restricted more to hate speech and related individual behaviour rather than other manifestations of sectarianism.

The paper covers issues as regards to the conceptualisation of sectarianism and the positions taken by United Nations and Council of Europe anti-racism committees which locate sectarianism in Northern Ireland as a form of racism, and the utility of the concept of ‘institutional racism’ developed in the UK following the Macpherson report. It covers the issue of the undertheorisation of sectarianism, developments in the legal and policy frameworks in Northern Ireland, Scotland, England and Wales, United Nations and Council of Europe levels before scoping and critiquing potential definitions of sectarianism.

The expert paper is available on the Equality Coalition website www.equalitycoalition.net

Civil Liberties Diary - April 2014

3 April

The Peace Monitoring Report, published by the Community Relations Council, found that lower-income Protestant students score significantly lower in their GCSEs than lower-income Catholic students.

7 April

Zero-hour contracts, under which employees only work when needed and are only paid for the hours they work, are increasingly used by health trusts in Northern Ireland, despite criticism that the contracts exploit workers. In the past four years, use of zero-hour contracts has increased by 60%, to almost 70,000 agreements.

10 April

Coroner John Leckey is to write to NI Secretary of State Theresa Villiers to inquire whether any of the seven suspects in the Kingsmills massacre have received the 'on-the-run' comfort letters.

16 April

Judge David McFarland has warned that the courts will hand out tougher custodial sentences for public disorder charges over the summer marching season.

Northern Ireland Secretary of State Theresa Villiers warned that Stormont needs an opposition party if it is to survive and move forward. She also noted the need to implement welfare reform and extend the National Crime Agency.

17 April

Kathryn Stone has announced that she will be departing her role as Victim's Commissioner to take up a post in England. Victims and survivors groups fear that her departure may push their concerns to the margins.

24 April

Court orders previously banning the media from identifying alleged sex offenders have been lifted in 25% of the cases. The anonymity orders were originally given under section 1(2) of the Sexual Offences (Amendment) Act 1992. Solicitors were requested to provide justification for why their clients required anonymity.

29 April

Mr Justice Treacy ruled that police chiefs wrongly facilitated illegal loyalist flag protest marches. The police incorrectly believed that they were prevented by law from stopping the parades and arresting participants.

30 April

The Northern Ireland Assembly rejected, for a third time, a motion to bring same-sex marriage to Northern Ireland. The motion was defeated by a margin of 51 votes to 43.

The Ballymurphy Massacre families are considering a legal challenge after NI Secretary of State Theresa Villiers rejected a call to establish an independent review panel to re-assess the evidence related to the massacre.

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Just News

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