

Poverty and Human Rights in Ireland

In January 2011 the UN Independent Expert on Human Rights and Extreme Poverty Magdalena Sepúlveda visited Ireland using her mandate under the “UN Special Procedures.” The Special Rapporteur was appointed by the Human Rights Council to examine the links between poverty and human rights. Her findings following country visits are reported to the Human Rights Council and the General Assembly. The Special Rapporteur’s visit could not have been more timely. In a time of economic decline, there is evident pressure on states to forgo spending on a range of social programs and to limit its social protections to safeguard the economic stability of the state. Ireland is a classic case in point, as those most vulnerable and those in poverty have experienced the sharp end of budget cuts in recent months.

The Special Rapporteur has made clear that human rights should guide the design, implementation, monitoring and evaluation of social protection systems. She has said that social protection programmes are tools that can assist States in fulfilling their obligations under international human rights law. The Independent Expert’s findings and recommendations to the Government of Ireland and other stakeholders will be included in a report to be presented to the UN Human Rights Council in June 2011. After her visit to Ireland the Special Rapporteur reported that ‘the economic and financial crisis in Ireland poses a disproportionate threat to vulnerable segments in the country who benefitted little from its economic boom in the first place ...’ She noted that “the milestones achieved in social protection face a serious threat,” and challenged the government to incorporate into the national recovery plan, a comprehensive and consistent policy to protect the most vulnerable in society in full compliance with Ireland’s human rights obligations. She underscored the importance of protecting human rights “in times of economic uncertainty.” This means that when the state is considering and enforcing measures designed to assist an ailing economy, it must assess the impact of these policies on the most vulnerable groups “consider their appropriateness; and examine alternatives aimed at protecting such groups as a matter of priority.” She was highly specific about what programmes and policies would adversely affect the vulnerable: “I am especially concerned about the upcoming cuts in expenditure on social protection and public services that are likely to have a disproportionate impact on people living in poverty and suffering from social exclusion. The cuts to the general social welfare payment, jobseekers’ allowance, one parent family payment, disability allowance, community and voluntary services, and adult literacy funding, among other measures, will have a significant impact on the living standards of the most vulnerable groups.”

The Special Rapporteur also paid close attention to the gender dimensions of poverty noting that women in particular bear the brunt of care and responsibility when economic crises hit. Children were also seen as especially exposed to the effects of poverty, especially in single-parent household. She affirmed that “the substantial cuts in child payments and services in recent budgets can exacerbate their situation, leading to an increase in the worryingly high child poverty rates. This would represent a major step backward for Ireland.” Ultimately the Special Rapporteur affirmed the importance of civil society in defending the rights of the vulnerable. She encouraged the government to continue to actively and meaningfully ensure the “participation of civil society ... in the design, implementation and evaluation of all public services.” She also welcomed the government’s commitment to reach the target of 0.7% GNP to Official Development Assistance by 2015. Her report is a timely reminder that the response to economic crisis must be in full compliance with human rights standards and sustain gender equality.

Professor Fionnuala Ní Aoláin, Transitional Justice Institute

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Obituary – Kevin Boyle

Kevin Boyle, who has died of cancer aged 67, was an internationally respected human rights lawyer, activist and academic. He had recently become emeritus professor of law at the University of Essex after more than two decades there, as one of its leading scholars. From 1990 to 2003 and again in 2006-07, Kevin was director of the university's Human Rights Centre, developing it into a multidisciplinary powerhouse. At the same time, as a practising barrister (he was called to the bars of Northern Ireland, the Irish Republic and England and Wales, and from 1992 was associated with Doughty Street Chambers in London), Kevin brought many human rights cases before the European Commission and Court of Human Rights.

The numerous cases against Turkey that he and his Essex colleague Françoise Hampson took on behalf of the Kurdish Human Rights Project concerned the gravest violations: torture, murder and enforced disappearances. In recognition of this work, the two colleagues were named lawyers of the year in 1998, an award made by Liberty and the Law Society Gazette to mark the 50th anniversary of the UN Declaration of Human Rights. Such successful prosecutions became the raw material for scholars and practitioners to trace a fast-evolving field of international human rights law. They also laid a strong foundation of precedent which helped the European court of human rights to address similar atrocities perpetrated by Russian forces in Chechnya.

Kevin took a year away from teaching when, in 2001, the then UN High Commissioner for Human Rights, Mary Robinson, the former president of Ireland, asked him to join her in Geneva as her senior adviser and speechwriter. His first day in office was 11 September 2001, when, after consulting colleagues around the world, he advised Robinson to denounce the attacks on the World Trade Centre as a crime against humanity, rather than simply a violation of human rights. After his return to Essex, Kevin became chair of Minority Rights Group International, an office he reluctantly had to give up when his health declined. Kevin was born in Newry, County Down, one of nine children. After graduation in 1965 and a diploma in criminology from Cambridge in 1966, Kevin became a lecturer at Queen's and by 1968 was active in the Northern Ireland civil rights movement. He was a spokesman for the People's Democracy group, formed by students protesting at the repression of civil rights demonstrations, and later centred his activities on the Northern Ireland Civil Rights Association, of which he became an executive board member. Together with his colleague and friend Professor Tom Hadden, Kevin spent his time during the Troubles exploring avenues for the peaceful resolution of the conflict, presenting some of their ideas in their book, co-authored with Paddy Hillyard, *Law and State: The Case of Northern Ireland* (1975).

In 1972 Kevin went to Yale University for a year of intellectual renewal, returning first to Queen's and then in 1978 becoming the first full-time staff member of the law school of University College Galway (now the National University of Ireland, Galway). In 1976 he had married Joan Smyth, a language teacher, and both came to regard their years in Galway, raising their two sons, as a magical time. There, Kevin founded the Irish Centre for Human Rights in 1980. He became active in international human rights work, going on several missions for Amnesty International. In this context, observation was sometimes complemented by practical humanitarianism: shocked by the oppressive system and its impact on poor migrant labour, Kevin himself paid the fines of poor women he witnessed on trial in a magistrates court for breaching the pass laws by travelling in search of their husbands. In 1986 Kevin was appointed founding director of Article 19, the international non-governmental organisation promoting freedom of expression and of the press, which he led to prominence and stability. That year Kevin became professor of law at the University of Essex. None of his high-profile activity on the international stage diminished Kevin's commitment to his students, many of whom now work in institutions concerned with human rights throughout the world, and who hold Kevin in affectionate esteem as teacher and mentor. Approaching retirement brought a spate of honours, but he counted as his most cherished accolade a festschrift with contributions from students and colleagues presented to him in September last year.

He is survived by Joan, sons Mark and Stephen, four brothers and three sisters.

Written by Professor Sir Nigel Rodley and originally published in the Guardian and republished here with thanks <http://www.guardian.co.uk/law/2011/jan/02/kevin-boyle-obituary>

Report from Amnesty International in Cairo

Describing in words the atmosphere in Tahrir Square on the evening of Hosni Mubarak's resignation after 30 years in power would never do it justice. It was a bit like Cairo itself – you cannot understand it unless you have lived it, felt it, smelt it and drank chlorine-filled water from its tap.

All we can say is that it was a great privilege to be there for this momentous historical occasion. We can project, years from now, our children or grandchildren rolling their eyes when we repeat, perhaps with a fleeting look of nostalgia or tears in our eyes: "I was there, in the sea of people from all ages, social classes, political backgrounds: Muslim and Coptic, men and women, rich and poor, veiled and unveiled, feeling part of a whole new Egypt that was being reborn."

In fact, to navigate across the square one needed to follow the right current of people if one hoped to reach friends with whom to share the once-in-a-lifetime experience. If not, people would scream "mabrouk [congratulations]" to each other over the phone in disbelief and with hysterical laughter.

We came from a generation, like more than a third of all Egyptians, for whom Hosni Mubarak as President was a natural, permanent state of affairs – as engrained in our psyche as the national anthem we had to sing in school every morning. His fall as a result of a popular uprising was something many dared to dream of, but never quite believed, even after the ousting of Tunisia's President Zine el Abidine Ben Ali less than a month ago. We are used to our leaders either dying of natural causes, being overthrown in palace coups or being assassinated.

People's sense of achievement and pride in being able to take control of Egypt's future reverberated across the square. "Put your head up high, you are Egyptian," was sung over and over again and was complimented by laughter, ululations, songs of praise, drums and the waving of Egyptian flags. Nonetheless, one could see that not all those in the square were fully consumed by the celebratory fever. The sweet potato seller seemed more concerned about making enough profit to provide for his family than joining the party. Despite the magnitude of Hosni Mubarak's departure, harsh realities do remain for many Egyptians struggling daily to make ends meet.

While some were busy dismantling and cleaning up Tahrir Square, others were visiting it as one would visit a museum: bringing their whole families to watch and taking pictures to immortalize the place where history was made before it returns to normal. On Sunday, the beginning of the working week, there were indeed signs of a return to normal life. In fact, patches of protesters of another kind had sprung up across Cairo including state employees claiming their share of the change. In hospitals, banks and insurance companies, employees gathered to demand better pay and working conditions.

Even policemen chanted in front of the Ministry of Interior that the "police and the people were one". Apparently when the army fired shots into the air to deter them from getting any closer, they chanted "[the protest is] peaceful, peaceful" – a slogan used by protesters not long ago to persuade the police to avoid using excessive force – unfortunately in vain for the hundreds killed and thousands injured on the road to change.

The future of Egypt remains uncertain with so many questions unanswered: Who governs the country now? Who will draft a new constitution after its suspension along with the parliament by the Supreme Military Council? When will the curfew be over? When will the state of emergency be lifted? When will elections be held? When will the figures of the old political system face trials for the crimes committed? When will those detained arbitrarily be released? Will regular Egyptians now be able to live in dignity, with jobs that meet their aspirations and houses where they can live safely?

While these questions naturally raise anxiety, most Egyptians are holding on to optimistic feelings that the country is heading in the right direction – one where human rights, the rule of law, prosperity and people's will are respected.

More information: www.amnesty.org.uk/egypt

CAJ's response to Draft Budget 2011-15

This month the consultation period ended for the Executive's and departments' draft budgets 2011-15. CAJ responded to all of the consultations, pointing out the lack of substantive assessment of equality impacts. It is likely that the swingeing cuts will have disproportionately negative impacts for the most disadvantaged groups in our society. However, due to the departments' inadequate equality assessment, the extent and nature of these impacts are unclear. Moreover, the lack of time and information provided for the consultation exercise made it impossible for civil society to respond in a meaningful way.

For the past six months, CAJ has been corresponding with each of the departments' Ministers to underline the importance of having due regard to the promotion of equality of opportunity, which is required by s75 Northern Ireland Act 1998 ('s75'). We also made Freedom of Information ('Fol') requests for any equality assessments undertaken for spending bids and savings plans. Given the content of the consultation documents and replies to our Fol requests, we believe that none of the departments fully discharged its s75 duties.

Inadequate s75 Impact Assessment

Some departments completed High Level Impact Assessments ('HLIAs'), as recommended by DFP in its summer 2010 guidance on the budget. However, as confirmed by the Equality Commission for Northern Ireland ('ECNI'), an HLIA is insufficient to ensure compliance with s75. We alerted the departments to the need to carry out screening, use qualitative and quantitative data, mitigate any negative impacts and consider alternative policies, as is set out in each of their equality schemes. A few departments did carry out screening exercises, but these did not apply to all policies and appeared to be a procedural, as opposed to substantive, exercise.

Generally, all HLIAs and screening exercises did not find any negative impacts. This was surprising, given the extent of the cuts suffered and the fact that many s75 groups have a necessarily high uptake of public services. CAJ's review of the consultation and Fol documents found two key problems with the HLIAs and screening forms, which forced us to question the soundness of their conclusions.

First, most departments took a 'tick box' approach to HLIA and screening forms, so that diverse policies had identical information and results. It is clear that merely ticking boxes is not sufficient to discharge the s75 duty. The courts have found that an 'equality impact assessment should be an integral part of the formation of a proposed policy, not justification for its adoption... a record will not aid those authorities guilty of treating advance assessment as a mere exercise in the formulaic machinery. The process of assessment is not satisfied by ticking boxes.'¹

It is only with reference to underlying data that departments can truly understand the potential impacts of their budget proposals on s75 groups. Once the underlying inequalities and expected participation of the equality groups are ascertained, the departments can then consider the extent of the negative impacts and the best approach to combating them and promoting equality of opportunity. Jurisprudence has underlined that 'the duty must be exercised in substance, with rigour and with an open mind.'²

Secondly, many departments showed fundamental misunderstanding of equality and the objectives of s75. The most frequent confusion lay in the mistaken belief that the universal application of proposals would lead to positive impacts for all. Due to underlying inequalities in our society, some groups might have less access to or benefit from a policy, despite the intention that it benefits all. As a result, the universal application of some proposals does not necessarily imply positive or neutral impacts, and it could in fact further exacerbate the inequalities in our society.

A few consultation documents did recognise the potentially negative impacts of budget proposals. Unfortunately, this recognition did not generally lead to mitigation of these adverse impacts and any attempts at mitigation involved reference to existing programmes, rather than altering the budget proposal itself.

Incorrect Timing

A few departments expressed the intention to screen and/or carry out full equality impact assessments ('EQIA') in the future. The Executive and one department have already carried out EQIAs of their budget

proposals, but both were published less than two weeks before the consultation deadline. Unfortunately, due to the late publication, neither of the above approaches allows for equality impacts to inform the budget consultation process, which limits the usefulness of the EQIAs and the budget consultation exercise itself.

Furthermore, the late publication of EQIAs suggests that the equality assessment takes place after budget allocations are decided upon. This runs contrary to ECNI Guidance and well-established GB caselaw.³ The courts have warned that ‘it is unlawful to adopt a policy contingent on an assessment,’ and that such an EQIA would amount to ‘policy-based evidence rather than evidence-based policy.’⁴

Finally, the Programme for Government (‘PfG’) and Investment Strategy for Northern Ireland (‘ISNI’) have not yet been published, which will further exacerbate the incorrect timing of the consultation. We appreciate the time pressures involved in the budget process, but the necessary review of policies once the PfG and ISNI are published will further delay the adoption of the budget.

Insufficient Information

Each of the budget consultations provided insufficient information to respond in a meaningful way, as the potential equality impacts were unclear. Despite our Fol requests, and receiving 1000s of pages of screening and HLIA forms, the information provided did not substantively consider equality impacts or underlying data. Even the Executive’s EQIA was limited to the narrow context of economic objectives and employment figures, as opposed to the diverse impacts across policy areas. The consultations also lacked coordination and cohesion, so that it was impossible to ascertain how one proposal may impact on another.

In order to engage in meaningful consultation, consultees must be provided with sufficient information to understand, scrutinise and comment on the policies proposed. This approach is underlined in the BERR Code of Practice on Consultation⁵ and the ECNI Guidance on s75.⁶ Also, in common law, the need for sufficient information in any consultation process is set out in the “Sedley Requirements”⁷, which state that:

- i. it must be undertaken when proposals are still at a formative stage;
- ii. it must give sufficient reasons to permit the consultee to make a meaningful response;
- iii. it must allow adequate time for consideration; and
- iv. the results of the consultation must be conscientiously taken into account in finalising any proposals.

We believe that these minimum requirements for meaningful consultation were not fulfilled by the Executive or departments in relation to equality impacts and consultations on budget proposals.

Conclusion

CAJ has requested that the Executive and departments carry out a more detailed EQIA once the PfG has been finalised and release it for consultation in advance of approving the budget, PfG and ISNI. We also requested that any such consultation run for a minimum of 12 weeks, as recommended in ECNI, BERR and OFMDFM Guidance. Finally, we requested that the Executive and departments consider more carefully, and with evidence, the actual impacts that its budget may have on disadvantaged groups and the best way to promote equality of opportunity, as required by s75.

The importance of these impacts is also reflected in international human rights treaties.⁸ Indeed the UN Independent Expert on human rights and extreme poverty stated last month that ‘[h]uman rights are not dispensable and cannot be disregarded in times of economic uncertainty.. [B]efore designing and implementing any policy measures aimed at the recovery, policy makers must assess the impact of the measures on the most vulnerable groups of society, assess the appropriateness of the measures, and examine alternative policy options that would protect vulnerable sectors of society as a matter of priority.’⁹

CAJ’s consultation responses to the draft budgets 2011-15 can be found at www.caj.org.uk

Footnotes on next page

Taking a closer look at CAJ

Each month in 2011, Just News will profile a different staff member, outlining his/her role in the organisation and giving an overview of the kind of work they do on a day to day basis. If you believe the CAJ staff person can be of any assistance to you, please contact them directly.

Equality Programme Officer - Debbie Kohner

CAJ's equality programme officer works on a broad range of legal and policy issues relating to equality in Northern Ireland ('NI'). The aim is to strengthen and promote the equality framework in NI, and so lessen the inequalities suffered in our society. CAJ has an overarching remit, with an interest in all equality strands and the overriding equality principles that apply to all groups.

CAJ was instrumental in placing equality at the heart of the Good Friday / Belfast Agreement. The equality programme officer continues to monitor public authorities' application of the statutory duty to promote equality of opportunity. This is done through responding to public consultations, reviewing Equality Commission Guidance and reviewing the enforcement mechanisms. She also meets with public authorities and serves on departmental equality and diversity forums to help influence action at source.

The equality programme officer monitors developments of equality law, policy and practice. When the UN and other treaty bodies report on equality issues in Northern Ireland, the equality programme officer works on submissions by CAJ. This year, reports will be completed on national minorities, racial discrimination, discrimination against women and the rights of people with disabilities. Where equality laws have not been respected by public authorities, CAJ can intervene in strategic litigation to help test and strengthen the equality regime.

In an effort to ensure that our law and policy complies with equality and human rights obligations on an international, national and local level, the equality programme officer reviews the extent and application of anti-discrimination laws. We monitor the implementation of European equality directives, and also compliance with international human rights treaties. The equality programme officer will lobby for the most robust legislative framework for equality matters, and one that is best suited to our local context.

CAJ is co-convenor of the Equality Coalition, which provides a forum for all community and voluntary sector organisations to debate equality issues and progress the equality agenda in NI. The equality programme officer provides the Secretariat function for the Equality Coalition, which involves planning monthly meetings, providing sectoral information, coordinating action and setting up events. As part of this role, and given CAJ's longstanding work on equality issues, the equality programme officer provides advice to other stakeholders in order to help support their work.

If anyone would like further information on the equality programme officer's work, please do not hesitate to contact debbie@caj.org.uk

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¹R (Kaur and Shah) v London Borough of Ealing [2008] EWHC 2062, at paras 24 and 25.

²Brown v SOS for Defence [2006] IRLR 934, at para 92.

³ In relation to s71 Race Relations Act 1976, which requires public authorities to have due regard for the need to promote the equality of opportunity in relation to race.

⁴ R (Kaur and Shah) v London Borough of Ealing [2008] EWHC 2062, at paras 36 and 37.

⁵ Department for Business, Enterprise and Regulatory Reform, July 2008, found at <http://www.berr.gov.uk/files/file47158.pdf>

⁶ Section 75 of the Northern Ireland Act 1998 A Guide for Public Authorities, April 2010, at page 39, found at <http://www.equalityni.org/archive/pdf/S75GuideforPublicAuthoritiesApril2010.pdf>.

⁷ R v London Borough of Barnet, ex parte B [1994] ELR 357, 372G.

⁸ Such as the International Covenant on Economic, Social and Cultural Rights, ratified by the UK in 1976.

⁹ Statement of Magdalena Sepúlveda, UN Independent Expert on human rights and extreme poverty, following a recent mission to Ireland. Full text can be found at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10658&LangID=E>

Creative reflections on key human rights instruments - The Universal Declaration of Human Rights

For me the Universal Declaration of Human Rights is a profound promise that humanity will prevail when nations, ideologies, and religions fail to manage the extremes of human behaviour they often provoke. **Rita Duffy, Artist**



Guantanamo, Amas, Amat
Rita Duffy, artist. Titled by Paul Muldoon, poet

Civil Liberties Diary - January

7th January

Michael Stone who was sentenced to 16 years for the attempted murder of both Gerry Adams and Martin McGuinness in November 2006, has had his appeal declined in the Court of Appeal.

10th January

The Northern Ireland Prison Service has appointed Colin McConnell as its new head.

Chief Constable Matt Baggot is being sued by the father of a child entered into the witness protection programme. The child was taken out of the country with his mother and her new partner due to concerns over her partner's safety after being identified as an ex-loyalist paramilitary informer. The father was not informed despite having full parental rights, the child's school and social services knew nothing of the move either. The father decided to find his son through the services of a private investigator, since the PSNI continually refused to provide any information about the whereabouts of the child. The father of four then applied to the High Court and Mr Justice Weir ordered that the child should be returned to Northern Ireland.

Sir Terence English, the former president of the Royal College of Surgeons and the British Medical Association, who performed Britain and Northern Ireland's first heart transplant in 1979 has offered his support for a right to die campaign, the Healthcare Professionals for Assisted Dying.

12th January

The Secretary for State, Owen Paterson, has delayed further the

decision as to whether there should be a public inquiry into the killing of human rights solicitor Pat Finucane. Mr Paterson stated "in light of the fact that useful discussions are under way between the family and the government, I have decided, with the agreement of the family, to extend the period during which I will receive representations by two months." The family's lawyers released a statement that said "the Finucane family have campaigned for 21 years for a public inquiry into the circumstances surrounding the murder of Pat. The essence of a proper inquiry is independence."

18th January

The Lord Chief Justice has rejected a legal bid to stop the use of Taser stun guns, by police in Northern Ireland. The application was made by an unidentified eight year old Belfast girl whose grandmother had been killed by a plastic bullet 30 years ago. But Sir Declan Morgan ruled "there is no material before the court to indicate any circumstances in which this child was or might be in a situation which might lead to the deployment of a Taser in her vicinity." It was also held that the procurement and deployment of the weapons did not breach the child's right to life under the European Convention on Human Rights.

28th January

A report carried out by the Justice Ministers department has highlighted that prostitution was reported in 18 of the 29 police areas in Northern Ireland. The study proved that prostitution was prevalent outside of the Greater Belfast area. It also identified 17 victims of human trafficking forced into prostitution. Justice Minister David Ford stated "this is a valuable piece of research which for the first

time catalogues the extent of prostitution and human trafficking across Northern Ireland."

31st January

Only 70 per cent of the 122 Anti-Social Behaviour Orders (Asbos) have been complied with in Northern Ireland between 2005 and 2009.

Legislation being proposed by Pat Ramsey MLA to have all cyclists compulsorily wear helmets has been criticised as being impossible to enforce. Under the legislation parents would be fined £50 if their child was caught without the correct safety equipment. Tim Edgar of CTC the cycling campaign group warned that the law could lead to a dramatic drop in the number of people in Ulster using bicycles. He stated "there's robust evidence that making helmets compulsory puts people off cycling in the first place" he continued "that would have a significant impact on the current levels of cycling which we've worked so hard to increase over the last few years."

Compiled by John Keers from various newspapers

Just News

Just News welcomes readers' news, views and comments.

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