Bulletin of the Committee on the Administration of Justice
January 2004
Just News
Human Rights in Northern Ireland

# Publish and be Damned!

**On 12th January Judge Peter Cory contacted the families of Patrick Finucane, Robert Hamill, Billy Wright and Rosemary Nelson to tell them that he had recommended public inquiries in each of their cases to the British government. Just News readers will of course be aware that Judge Cory is a former Canadian Supreme Court justice, who had been asked by the British and Irish governments to examine six alleged cases of collusion on both sides of the border.**

In October last year Judge Cory completed his reports into the six cases and handed his reports to the two governments. The two cases involving alleged collusion with the gardai were the killings of Judge Gibson and his wife, and two senior RUC officers, Bob Buchanan and Harry Breen. These were delivered to the Irish government and those relating to the above four cases were given to the British government. On 18th December last year the Irish government published the Judge's reports into the Gibson and Breen/Buchanan cases. In the Gibson case Judge Cory said there was insufficient evidence to justify the holding of an inquiry but in the Breen/Buchanan case he recommended that there should be a public inquiry. Simultaneously with publishing the report the Irish government said that they would comply with the recommendation in the Breen/Buchanan case and hold an inquiry.

In the Breen/Buchanan report Judge Cory outlined the test he was using for collusion. He said that "[B]ecause of the necessity for public confidence in the police, the definition of collusion must be reasonably broad when it is applied to their actions. This is to say that police forces must not act collusively by ignoring or turning a blind eye to the wrongful acts of their servants or agents or by supplying information to assist others in committing their wrongful acts or by encouraging them to commit wrongful acts. Any lesser definition would have the effect of condoning, or even encouraging, state involvement in crimes, thereby shattering all public confidence in these important agencies."

We understand Judge Cory has used the same definition in all of the cases he has examined. In those circumstances, it is perhaps not surprising that he has ordered inquiries in the four northern cases.

The revelation by Judge Cory that he has ordered inquiries in these four cases is of course primarily a vindication of the long campaigns by the families. It is also an endorsement of what CAJ and other NGOs have been saying about these cases for years. A senior international judge has looked at each of the cases in detail and has concluded that there is enough evidence to warrant a public inquiry.

Depressingly, although the British government at the Weston Park talks signed up to the Cory process and indicated they would publish his reports and comply with any recommendations he made, they have so far refused to publish the Cory reports or indeed confirm his recommendations. They have also refused to confirm they will implement his recommendations. While there may have been some legitimate excuse for not immediately publishing the reports, the government has now had the reports for more than four months. This is an inexcusable delay which is adding to the trauma of the families concerned. The British government's strategy in these cases appears to always have been to delay them as long as possible while it struggled to find a way to escape responsibility for its actions. In this they have been quite successful but thanks to the tireless work of the families involved and the integrity of Judge Cory, an end is finally in sight. All of those who have been involved in these cases over the years on this island and the neighbouring one, and indeed further afield, need to tell the British government to now fulfil their commitments and finally bring an end to the tragedy of these cases.

## Contents

# The Impact of the Article 2 Judgement in the North

## Pat Finucane Centre event

The European Court of Human Rights' judgements in the cases of Jordan, Kelly, McKerr and Shanaghan v. United Kingdom (May 2001), McShane v. United Kingdom (May 2002) and Finucane v. United Kingdom (July 2003) opened up options for other cases involving life-taking in terms of the procedural obligations of criminal justice agencies and the state under Article 2 of the European Convention on Human Rights. Ongoing domestic litigation is testing the extent to which these obligations are going to be met by the PSNI, by the Public Prosecution Service, by coroners, and by the Secretary of State for Northern Ireland. A lack of clarity arising from the absence of explicit requirements by the European Court and unresolved issues awaiting judgement in ongoing domestic litigation has led to confusion amongst families and legal practitioners alike in terms of what can actually be demanded and expected from the various agencies. The Pat Finucane Centre therefore organised workshops for families and legal practitioners to provide an opportunity for discussion of the implications of ongoing Article 2 related casework, and to begin strategising around how to address issues relating to life-taking by the state during the conflict.

Paul Mageean (CAJ) provided a succinct outline of the findings of the European Court in relation to the recent Article 2 judgements, and he highlighted some of the implications arising for other cases from these judgements. Fiona Doherty (a barrister who represents a number of families in Article 2 litigation) then provided an overview of domestic litigation in Northern Ireland and in Britain relating to Article 2 procedural obligations in order to flag up new developments and also points of law that are currently under scrutiny. Paul and Fiona were of course the CAJ lawyers who took the Kelly and Shanaghan cases to Europe.

Having received a brief overview of developments, the group formed two workshops: the first workshop was for bereaved families, and the second was for legal practitioners.

## Bereaved families

The families workshop provided an opportunity to discuss the judgements and the implications for their individual cases. It was also an opportunity for families to seek clarification of Article 2 related issues and legal jargon that they did not understand. Various campaign options were also discussed as a potential means for families to utilise other methods of advancing their cases, thus preventing reliance on the legal system that has become somewhat clogged up with Article 2 related litigation. It was emphasised that every case is unique and families should look at the particular circumstances and the particular failings in relation to their case in order to determine a strategy that can address the needs of the individual family. Families were encouraged to make use of the services and skills of human rights organisations and/or solicitors.

## Call for improved networking

Within the local human rights community it is felt that a crucial factor to addressing cases involving state violence and/or collusion is to nurture an increased degree of engagement and networking within the legal community, and between the legal community and human rights/ victims organisations. The second workshop therefore sought to provide an opportunity for practitioners to tease out a means by which this could be achieved. With twenty solicitors and barristers in attendance from firms in Derry, Belfast, Armagh and Tyrone a useful discussion ensued and it was agreed that there was a need to liase more closely on Article 2 related issues. Addressing the lack of any system at present by which information and lessons and advice can be shared, those in attendance agreed that there is a need to come together again in the future. To this end, it was decided that there will be a meeting after the House of Lords judgement in the McKerr case to discuss the significant implications it will have for all conflict related cases. Thematic workshops will also be held on occasion, addressing discrete elements of Article 2 and related issues. It was striking that when the decision to improve networking and information was announced at the plenary session, it was greeted with applause from families and representatives of human rights organisations! It is hoped an improved system of networking, information sharing and lesson drawing between human rights groups and legal practitioners will improve the service we all provide to families who are undertaking the traumatic and often frustrating task of seeking answers to questions relating to the death of their loved ones. A particular success of the event is that since the workshops a number of meetings have already been held between various lawyers to share information and ideas pertinent to each other's cases.

An underlying theme of the day, though, was to be wary of not escalating expectations amongst family members stressing that Article 2 does not provide the final answer in relation to state violence cases. As practitioners we need to be conscious not to raise the expectations of families too high, as Article 2 merely provides a legal minimum. A focal point for practitioners and families alike is to remember that Article 2 provides only part of the answer, and that there is a bigger picture which requires a bigger solution.

Documents relating to Article 2 developments post-*Jordan et al* are available from the PFC website at *http://www.serve.com/pfc/euro/eurindex.html*

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# CAJ's Director moves on ...

**At the farewell reception held recently for Martin O'Brien, Michael Farrell was asked to pay tribute to Martin's leadership of CAJ.**

It is both an honour and a pleasure to be asked to pay tribute to Martin O'Brien, who is both a good friend and someone who has been for many of us the moving spirit of the human rights movement in Northern Ireland, if not the whole of Ireland, for nearly 20 years now.

I first met Martin in 1990-1991 when I joined the executive of the Irish Council for Civil Liberties (ICCL), CAJ's sister body in the Republic. CAJ gave us enormous assistance and Martin taught myself and ICCL most of what we know about human rights and running a human rights organisation. We are all in his debt.

**After 16 years as Director, Martin O'Brien has decided to move on to an exciting new job with Atlantic Philanthropies. He will be responsible for their human rights and reconciliation grant-making programme in Northern Ireland.**

**This new venture places him in an influential position to continue his life-long commitment to peace building and human rights.**

Martin has been a moving spirit in more ways than one. He is a mover and shaker, as well as being a high-minded idealist, and he knows how to get things done. In the last 16 years he opened doors and put pressure on politicians in the South as well and he has seen off a number of Secretaries of State, lesser politicians and civil servants in the North.

His key contribution has, of course, been in building CAJ into what it is today – one of the most effective and internationally respected human rights NGOs worldwide and one which has set the agenda for the human rights and equality movements in Northern Ireland for the last 15 years or so. He could not have done that without dedicated and talented colleagues but I think they would all agree that Martin's has been the guiding hand in all of this.

From when he joined CAJ in 1987 he was deeply involved in campaigning against ill-treatment in Castlereagh and in involving the UN Committee Against Torture in that issue. That was the start of a new direction for human rights work here: involving UN agencies and scrutinising governmental practices against the international standards they had signed up to, probably without thinking too much about the consequences. That later led to the important involvement of UN Special Rapporteur Param Cumaraswamy in the Pat Finucane and Rosemary Nelson cases.

Martin and his colleagues built up close and very valuable links with international human rights NGOs like the US-based Human Rights Watch and Lawyers Committee for Human Rights, and the Human Rights Directorate of the Council of Europe. They provided training, advice and, crucially, international support when it was needed and they enabled CAJ to punch well above its weight. Governments could not brush CAJ aside as easily as they had done other NGOs because they knew that they would be harried and harassed in international fora if they tried.

But CAJ under Martin did not just rely on international clout. He was crucial in demonstrating that CAJ was genuinely interested in human rights for all, for loyalists, for republicans, for ethnic minorities and that it was not in anyone's pocket. Governments and political parties respected him even if they did not always – or even often – agree with him. And he did not forget that human rights are ultimately about people. Victims always felt that he really cared about their plight.

Martin and CAJ's greatest achievement, however, was in making sure that human rights became a key component of the peace process. That was where all his talents came into play. He had the vision to see that human rights were crucial to any lasting settlement, he had the ability to build a coalition of the main human rights NGOs in these islands and international bodies to press for the inclusion of the human rights demands; and he had the political and lobbying skills to influence senior politicians on both sides of the Atlantic.

The results were substantial: the Patten Commission. Human Rights Commissions (North and South); commitments to a Bill of Rights, an all-island Charter of Rights, stronger equality legislation, the dismantling of emergency legislation, criminal justice reform. They have not all been delivered, but the commitments are there to be lobbied around. The importance of his and CAJ's work at the time was recognised when the Lawyers Committee for Human Rights honoured him in 1997 at the same time as Mary Robinson, and when the Council of Europe awarded CAJ its prestigious triennial Human Rights Prize in 1998.

All this may sound worthy but a bit dull and solemn. Those who know Martin well know that it is not the full picture, however. Apart from the fact that when he is off duty – and even sometimes when he is on duty – he has a distinctly mischievous streak, there is also the Martin who seems to know every rock and pop star, film star, member of the Kennedy family, and Bill and Hill (Clinton). Most mortals would queue up to meet these celebrities but in Martin's case, it seems, the celebrities queue up to meet him!

In conclusion human rights organisations are needed now more than ever to defend and build upon the gains that have been made. CAJ is in good shape. and Martin himself is now moving on to an equally important role in supporting the struggle for justice, equality and human rights.

# STATE INVESTIGATIONS

**The decision of the House of Lords of 16.10.03., in the case of R v SSHD ex parte Amin, [2003] UKHL 51, establishes once and for all, consistent minimum standards for the state's duty to investigate deaths in custody.**

The case arose out of the murder in a cell of Zahid Mubarek, by his cell-mate, Robert Stewart. There was a plethora of evidence warning of the dangers posed by Stewart, from his previous violent conduct in custody, his volatile mental state, and his racism. Nevertheless, the two men had been allocated to share a cell. There was a complex subsequent history of investigations by the Commission for Racial Equality (CRE). However, no inquest or other public hearings had been held, and no opportunity arose for significant involvement of the next of kin.

These omissions challenged the status of the requirements to the contrary in ECHR law. Hooper J. upheld these requirements and ordered a further inquiry. The Court of Appeal ruled that these were flexible general principles, not to be uniformly applied, especially in neglect cases: and that no further inquiry was necessary.

The House of Lords made five rulings of law, and two findings of fact:

a. the 'requirements' for an effective investigation set by Jordan v UK, (2003) 37 EHRR 52, and Edwards v UK, (2002) 35 EHRR 19, are 'minimum standards which must be met, whichever form the investigation takes.':
b. the 'requirements' for 'public scrutiny' and 'next of kin participation' are separate such requirements:
c. the 'requirements' apply with at least equal force to a 'state neglect' or omission case, as to a state 'lethal hands' case:
d. the trigger to the duty arises from the mere fact of the custody death, and does not depend upon an appearance or allegation of state fault: (see also Lord Steyn, to the effect that the bereaved do not have to demonstrate in advance on the facts the utility of an inquiry):
e. 'domestic standards' of investigation, established for many centuries, carry the same requirements of independence, public scrutiny and family participation:
f. this case history of investigations falls well short of those minimum domestic and ECHR standards:
g. there are many unanswered questions which require a fresh inquiry in the absence of an inquest, this must be in public, with representation for the family, provision of the relevant material and the right to cross-examine.

Several features of the case, provided an opportunity for the Home Secretary to advance arguments, which would have left unacceptable discretion to the state and removed any hope of consistent standards. Those features included:

- an immediate apology and acceptance of failure in the duty of care by the Director General of the Prison Service:
- an independent police inquiry, into both the murder itself and any wider criminal liability: the report was served upon the family while the Home Secretary's appeal to the Court of Appeal was pending:
- the criminal trial of the murderer, where the issue was 'diminished responsibility':
- the Crown Prosecution Service conclusion, on the advice of counsel, that there was insufficient evidence to prosecute any wider criminal liability:
- an internal Prison Service inquiry, by a serving Governor, Mr Butt: with offers of meetings and consultation: both parts of the report were promptly served upon the family, but neither were published.
- a Commission on Racial Equality (CRE) report into the race aspects of the incident: with no relevant public hearing, and without any real family participation: the report was published 3 working days before the House of Lords hearing:
- for detailed reasons set out in the Coroner's affidavit, she had exercised her discretion under S. 16(3) of the Coroners Act, 1988, not to resume the inquest, after the criminal trial.

**The Home Secretary's arguments were:**

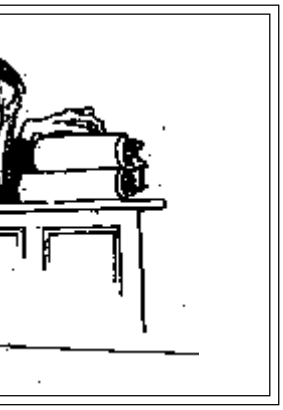
- the purpose of the Art. 2 investigative duty is confined to uncovering criminal liability: this was rejected by Hooper J and not revived:
- the 'Jordan requirements' do not apply to state omission/neglect cases: this was later abandoned because of the ECHR decision in Edwards v UK:
- those 'requirements' are merely flexible principles, to be applied at the discretion of the state and to lower standards in a state neglect/ omission case (rejected by Hooper J accepted by the Court of Appeal, rejected by the House of Lords).
- in particular, there was no separate requirement for public scrutiny and family participation: again rejected by Hooper J: accepted by the Court of Appeal: rejected by the House of Lords:
- on the facts, the history of investigations complied with these flexible principles, and demonstrated that there was no point in any further inquiry (rejected by Hooper J accepted by the Court of Appeal, rejected by the House of Lords.)

The approach of the House of Lords to the inquest issue is instructive. The Coroner's affidavit, filed to explain her exercise of discretion, gave a graphic account of the resource limitations under which she simply could not practically contemplate holding an inquest of this magnitude. She also set out the substantive and procedural legal restrictions upon the conduct of the inquest, which were unlikely to be compatible with investigating the issues in

# INTO CUSTODY DEATHS

the Amin case. This one document compellingly demonstrates the need for the reforms advanced in the recent Home Office Review, Cm 5831, June, 2003.

It was conceded for the family, that, in principle, an independent police investigation and an inquest are capable together of fulfilling the 'Jordan' requirements, and the state's investigative obligations. This concession is obliged by the core finding in McCann v UK (1995) 21 EHRR 97 as to the adequacy of the Gibraltar/ SAS shootings inquest. However, that was an unusual inquest, and the ECHR has since, in Jordan v UK, expressed deeper concern about effective disclosure of relevant material to the family. Further reservations were entered for the family at the Amin hearing about current procedures, including: inconsistency of disclosure in practice, despite the Home Office circular, inconsistency of funding, the narrow boundaries to the jury's findings and Coroner's current restrictions upon 'system neglect' verdicts, as to standard of proof, and excluding all but gross negligence.



The speeches reflect significant appreciation of these limitations. Lord Bingham suggests that the Coroner's reasons may well have been justified. He refers to the Home Office Review recommendations, indicating that they would avoid such problems and adds: "… no doubt that report is receiving urgent official attention." Lord Hope accepted the Coroner's reasoning, both as to resources and legal restrictions, and agrees that 'many of the issues' needing investigation 'would be beyond the scope of her inquest.'

Their Lordships expressed firm recognition of the potential need for 'even more anxious investigation' into a neglect case than a deliberate state killing. Though rare, the individual and system neglect issues in the Amin case are sadly not unique. Unless and until substantially reformed, there is strong judicial recognition of the need for more effective investigation than can currently be provided by inquests. The state therefore has a powerful incentive to accelerate the programme for inquest reform. Meanwhile, special mechanisms and resources will have to be provided for other forms of public inquiry in such cases. Lord Hope, after detailed explanation, suggests following the Scottish statutory model of 'fatal accident inquiry' as closely as possible.

The appeals in R (Middleton) v West Somerset Coroner [2002] 3 WLR 505, and Sacker v South Yorks Coroner [2003] 2 AER 278 have just recently been heard before the House of Lords. It is now questionable to what extent some of the more restrictive elements of the judgement in R v Coroner for North Humberside ex parte Jamieson [1995] QB 1, will survive.

The powers to compel witnesses, and to take evidence on oath, require statutory foundation. The lack of the former power, and the consequent absence of one key witness, was a primary reason for the finding of violation by the ECHR in the case of Edwards v UK. It is a stark anomaly that the Prison Act, 1952 contains no power for the Home Secretary to set up any such inquiry. This contrasts with the equivalent Northern Ireland statute and many hundreds of other examples of such statutory powers, some relatively trivial. The House of Lords chose therefore not to order the Home Secretary to do something beyond his powers. It would be constitutionally difficult for any court to order that a tribunal with such powers be convened under S. 1 of the Tribunals of Inquiry (Evidence) Act, 1921. This is entirely dependent upon a resolution being passed by both Houses of Parliament, and is not in the gift of any minister. The dilemma for the government is that any inquiry without such a power runs the grave risk of non-compliance with Article 2, unless every significant witness attends voluntarily.

The course of the 'Amin' litigation was marked by repeated 'shifting of the goalposts'. After the order of Hooper J and pending the appeal the police report was served upon the family and an affidavit of further evidence was filed, seeking to explain various apparent anomalies in the Butt Report. The CRE Report was published in the week before the House of Lords hearing. There was evidence of some consultation with the Home Office over the date of publication. The eventual effect was counter-productive, since at each stage further inconsistencies and disturbing details were revealed. The speeches disclose a profound unease over the possible extent of individual and institutional neglect.

This brief article focuses upon the legal significance of this decision. In more fundamental human terms, this is yet another humbling example of a courageous struggle by a family to make sense out of their grief. They have already done so by contributing to the future protection of vulnerable inmates. They have every hope of accomplishing more at the public inquiry. Lord Bingham recognised this as one of the main purposes of the investigation, and thereby humanely connected the needs of the bereaved with the duties of the state.

**PATRICK O'CONNOR Q.C.**
**Senior Counsel for Amin.**

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## CAJ's DPP Monitoring Programme

**CAJ is looking for members who are interested in attending the meetings of the District Policing Partnership in their area and reporting back to CAJ on their experiences. We are looking for volunteers across Northern Ireland. All you would need to do is regularly attend the meetings of your DPP and share your notes on the meeting with CAJ. If you are interested, or if you would like more information, contact Paula Schwartzbauer at 90961122.**

# Latest Steps Towards Implementing the Criminal Justice Review

## Criminal Justice Inspectorate NI – Stakeholder Conference

**A stakeholder conference, to launch the new Criminal Justice Inspectorate for Northern Ireland (CJI), was held recently in Belfast.**

The event provided an opportunity for Kit Chivers, the recently appointed Chief Inspector of Criminal Justice, to share his vision for the CJI which he explained was one of improving public confidence in the criminal justice system, thus assisting the criminal justice agencies in Northern Ireland become more efficient and effective by ensuring that in all their policies and operations they are even-handed between the communities.

The event also provided an occasion, particularly during the afternoon's thematic workshops, for individuals to express their concerns and interests in relation to specific areas of the criminal justice system in Northern Ireland.

The idea for a Criminal Justice Inspectorate derived from the Report of the Criminal Justice Review. The review recommended that an independent, statute-based, body should be created with responsibility for inspecting all parts of the criminal justice system in NI other than (for reasons of independence) the courts. The Review's intention was that the CJI be a permanent vehicle for the improvement and modernisation of the criminal justice system.

The subsequent legislative provisions for the Inspectorate, made in the Justice (NI) Act 2002, permit the Inspectorate, subject to consultation with and, in some cases the consent of, the Attorney General and Secretary of State, to inspect a range of criminal justice agencies such as the Public Prosecution Service, the Police Ombudsman, the Prison Service, Probation Board and a range of other statutory bodies. While the PSNI also comes within the remit of the Inspectorate, the Chief Inspector is under a statutory duty to first notify and delegate this activity to HM Inspector of Constabulary (HMIC). Only in cases where HMIC does not agree to carry out an inspection, may the Chief Inspector, with the approval of the Secretary of State, conduct the investigation. In respect of the other English and Welsh inspectorates for prisons, prosecution and probation, the Chief Inspector will be free to delegate functions relating to inspection in Northern Ireland to these respective bodies.

It is unfortunate that the Inspectorate will not have authority to inspect the NIO, especially given that its Criminal Justice Division has shared responsibility for developing a system of equity monitoring the criminal justice system. We were encouraged however by the positive comments of Kit Chivers at the Stakeholder Conference and his commitment to strive towards extending the remit of the CJI to include the NIO and the Court Service. Indeed, he indicated that he had been in consultation with David Lavery, Director of the Court Services NI, and was hopeful that a voluntary arrangement could be put in place which would permit the Inspectorate to operate some of its activities in relation to the courts.

### First Report of the Justice Oversight Commissioner

After considerable campaigning by CAJ and others for the creation of an independent body to oversee the implementation of the Criminal Justice Review, the Government agreed to establish a Criminal Justice Oversight Commissioner.

Lord Clyde was appointed to this position in June 2003 and took up office shortly thereafter. The terms of reference for the Commissioner, require him, amongst other things, to produce bi-annual reports to the Secretary of State, the Lord Chancellor and the Attorney General on the progress made by the respective criminal justice agencies in implementing the Review. The first of these reports was due to be completed by December 2003 and was officially published in January 2004.

The report provides a factual, public record of the implementing measures that have been taken by the agencies. It breaks implementation down into four separate stages, with full implementation not being completed until the last of these stages. As the report shows, the majority of recommendations have not gone beyond stage one on the implementation scale.

Despite this, the report generally portrays a very positive impression of the implementation process. In most cases, it does not criticise the undue delay in implementing recommendations such as those relating to the creation of a new, independent public prosecution service for Northern Ireland and efforts to secure both a reflective workforce across the justice system and a reflective judiciary. An exception to this is the criticism that the report levels at government for its failure to provide adequate resources to establish a Law Commission for Northern Ireland.

We appreciate that the Commissioner, who is only part-time, was under considerable pressure to produce a first report within a tight timescale. However, should agencies continue to fail to adhere to self-imposed targets for implementation, we would expect that Lord Clyde will expose this failure in his subsequent reports.

# What prospects for the the Anti-Traveller Order?

**Perhaps one of the most problematic documents emanating from government in recent times has been the recent proposal for control of unauthorised encampments. This euphemistically entitled document might otherwise have been called the 'Anti-Traveller Order'.**

This proposed legislation would mirror the Criminal Justice and Public Order Act 1994 and give the PSNI legislative powers to remove trespassers who have the intent of residing on land, together with their vehicles and other property. Similar legislation is in force in the Republic of Ireland, however the main difference between the two jurisdictions is the number of vehicles that have to be in an unauthorised encampment before action can be taken. In Britain, the legislation is only applicable where those in the unauthorised encampment have between them six or more vehicles on the land, however the legislation in the Republic addresses this as all unauthorised vehicles, regardless of the number concerned.

The consultation paper putting forward these proposals acknowledges that one of the main reasons behind 'unauthorised encampments' in the first place is the lack of alternative facilities – there are no official transit sites currently in Northern Ireland. Indeed, the central justification for these proposals is the wider accommodation strategy for Travellers recently completed by the Northern Ireland Housing Executive. This states that the NIHE has recently completed a comprehensive accommodation assessment of all Travellers and this is now being used to develop and prioritise a programme of Traveller accommodation schemes, including grouped housing, service sites and transit sites. However, and this is the sting in the tail of an otherwise flawless proposal, 'the timing of the delivery of these schemes will be dependent on the completion of the statutory processes, including land acquisition and the *availability of finance*' (emphasis added).

It is worth noting that at present unauthorised encampments are dealt with through legislation available to Roads Service, Public Health and Planning Service as well as standard ejectment proceedings. However, this new proposal would effectively criminalise nomadism in Northern Ireland, giving the PSNI and criminal justice system a lead role in dealing with the issue of unauthorised encampments. The report fails to outline why this should be necessary, other than that it is already in place in Britain and the Republic of Ireland. As outlined above, while the report acknowledges that the proposals will have an adverse impact on Travellers, the mitigation/alternatives being offered are contingent on a range of issues, including the availability of finance. Those working with the Traveller community will undoubtedly feel less than confident at the inclusion of this caveat, given the slow progress around the implementation of the PSI Working Group report on addressing the needs of Travellers in general. When it comes to allocation of resources, the Traveller community in Northern Ireland has not traditionally found itself in the front row. It is worth noting however that under the terms of Section 75 of the Northern Ireland Act. *'Clear evidence of the mitigation of impacts must be apparent in the policy assessments, and details of mitigation and its implementation must be included in the final recommendations'.*

A question clearly arises as to whether a vague commitment to provide alternative accommodation, contingent upon the availability of finances would comply with the above requirement.

The report is equally scant regarding compliance with the Human Rights Act. There is a reference to the potential implications of Article 8 of the ECHR, guaranteeing everyone the right to respect for private and family life, and acknowledging that any infringement of the individual's rights under Article 8 must be clearly justifiable, necessary and proportionate. There is however little further detail regarding this issue, other than a commitment to seek legal advice where necessary as legislation is developed. Equally, no mention is made of Article 3 of the EHCR guaranteeing a right not to experience inhuman and degrading treatment. It is worth noting that a recent ruling in the High Court in England found that an asylum-seeker forced to sleep on the streets had been subject to 'degrading treatment' as a result of actions on the part of immigration officials. Clearly, one could envisage circumstances in which Travellers (particularly families with children) facing action as a result of these new proposals might make a similar claim.

There has been much speculation regarding the impact both of Section 75 of the Northern Ireland Act, and the Human Rights Act. In particular, questions have been asked as to whether the new legal framework can make a real difference to those on the ground in Northern Ireland. There is perhaps no better test for the effectiveness of both pieces of legislation, than their capacity to stop the unauthorised encampments proposals.

A copy of "Proposal for unauthorised encampments" may be obtained from the Department of Social Development's website on www.dsdni.gov.uk

# Civil Liberties Diary

**Dec 1** New regulations protecting gay rights in the workplace came into force today. However, Dermot Feenan of the University of Ulster School of Law raised concerns that not enough has been done to raise awareness of the new regulations.

**Dec 2** The families of solicitor Pat Finucane and LVF leader Billy Wright demanded to know why the British government has not yet made public the findings of Judge Cory's report into the killings. They are concerned with how the government will implement the decisions of Judge Cory, especially regarding the issue of whether or not four separate public inquiries will be launched as recommended.

Security forces and prosecutors were accused of tampering with forensic evidence in the case of three men arrested in connection with a foiled Real IRA bomb in 2002. Claims include the planting of DNA on a lunchbox found in the car containing the device and the contamination of evidence by soldiers at Newry police station.

**Dec 4** Policing Board chairman Desmond Rea warned that the dispute between the Prison Service and staff at Maghaberry jail could have a serious impact on policing. Concerns included the cost of covering the recent strike when police officers were called in to cover for prison warders.

Bombardier Shorts has agreed to pay out £117,500 to settle cases of alleged discrimination and has promised to consult with the Equality Commission on its practices. The cases relate to allegations of religious, political and sexual discrimination.

**Dec 10** The Oversight Commissioner Tom Constantine published his ninth and final report into policing change.

Several hundred people gathered outside Belfast City Hall for a candle lit vigil against racism organised by the Anti-Racism Network in Northern Ireland in honour of International Human Rights day.

CAJ launched "Civil Liberties in Northern Ireland: The CAJ Handbook", 4th ed. at the Linenhall Library in Belfast.

Members of the Human Rights Consortium erected a "Tree of Hope" to celebrate International Human Rights Day.

**Dec 11** The PSNI chief constable Hugh Orde has admitted that there are no immediate plans for the go-ahead to be being given for a new £80 million police training college. Mr Orde was responding to the report by Tom Constantine who criticised poor facilities and a lack of movement towards a state-of-the-art training centre.

Irish language organisation Pobal has launched a leaflet encouraging Gaelgoirs to 'Know Your Rights' and avail of new rights available to them as a result of the European Charter for Regional and Minority languages.

**Dec 12** The charity Disability Action marked European Day of Disability by releasing a special recording, A Voice of Our Own, to all 26 District Councils. The tapes will feature people with disabilities calling for support from Councillors on issues such as equal opportunities, transport and jobs.

**Dec 14** Former Victims Commissioner Sir Kenneth Bloomfield called for a permanent and independent commission to be established to protect the interests of victims of the Troubles.

**Dec 16** The majority of Northern Ireland's 26 councils were accused of failing to operate non-sectarian employment policies according to a report by the Equality Commission. Figures show that only four councils have achieved anything close to a religious balance in the make-up of their workforces.

**Dec 18** Pressure mounted on the British government to release the findings of Judge Cory's report following the Irish government's publication of their report. A spokesman for the Northern Ireland Office said that the reports relating to Northern Ireland would be published but did not disclose when. Five human rights groups, including the CAJ, called for the immediate release of the reports, stating that the delay in publication was causing distress to the families concerned and would result in an erosion of public confidence.

Bogside and Brandywell Women's group will join with the University of Ulster to research the barriers faced by women from disadvantaged areas in seeking education and employment and the subsequent effect on young people growing up in workless households.

**Dec 30** A wide range of Northern Ireland community and reconciliation programmes have been given a cash injection from the Irish government's Reconcilliation Fund. 48 grants will be made, totalling almost 1million Euro. Those who will benefit include Co-operation Ireland, EPIC Youth Trust and the Crossfire Trust.

*Compiled by Sophie Orr from various newspapers.*

Just News
Human Rights in Northern Ireland

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**Just News** is published by the Committee on the Administration of Justice Ltd.
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