

Farewell to Inez McCormack

Just News rarely carries obituaries, but Northern Ireland's human rights community has now lost two of its stalwarts – Terry Enright (see Just News, December 2012), and on the 21st January 2013, Inez McCormack.



The photo (l-r) of Inez, Martin O'Brien (then CAJ Director) and then Irish President Mary Robinson is from a conference organised by the Equality Coalition in 1998. The President, talking of the alliances that had been built, said: "everyone is enlarged in this drama of discovery: the marginalised who understand more than victimhood; the legal expert who understands more than the law; the trade unionist who understands more than jobs; the human rights advocate who understands the 'human' as well as the 'rights'".

Inez came to human rights work through direct experience. Her unionist background had prepared her to think well of the police, so she was deeply shocked to witness a civil rights march in 1969 (at Burntollet Bridge) being ambushed by loyalists, thanks to direct assistance from the police. This abuse of power was to be an abiding concern for the rest of her life.

She moved from being a professional social worker, to a full-time trade unionist, to be the first female regional secretary of NUPE (eventually to become UNISON), and the first female president of the Irish Congress of Trade Unions (ICTU). Whatever the issue and whatever the campaign, at each step along the way, Inez ensured that the people who were most excluded and voiceless were given voice and space. She kept asking the challenging questions about who was not in the room, who was not at the table, and arguing that those who need change need to be a part of making the change: without them, change is meaningless.

She was one of the four signatories to the MacBride Principles, aimed at tackling religious and political discrimination in the workplace. Even Inez must have been surprised at the intense anger the US-based

contd...

Contents

Farewell to Inez McCormack	1 - 2
Call for no interference with Northern Ireland Bill of Rights Process	2 - 4
Jane Winter retirement event	4 - 5
Arbitrary Stop and Search: still part of life here?	6
Civil Liberties Diary	7 - 8

campaign unleashed in Northern Ireland: she cut a lonely figure as almost all shades of political opinion, and the local trade union establishment, argued that such Principles were damaging or, at best, irrelevant. Years later, she would wryly remember testifying before Congressional committees as others tried to undermine her by referring to her Protestant background! Yet now, few would challenge that the dramatic change in workplaces across Northern Ireland could have occurred without the external pressure created by MacBride.

As to CAJ, she always saw the importance of a group willing to speak truth to power, especially about contentious issues such as policing and criminal justice. But she also truly understood the universality and interdependence of rights. She believed, as did CAJ, that human rights were about much more than civil and political issues and that, in working together to build unusual alliances, one could achieve both accountability and a greater ownership of rights for all. Indeed her primary focus remained on “bread and butter” socio-economic rights such as health, education and housing, and UNISON, under her leadership, took a seminal judicial review on equality. Moving this broader non-discrimination and equality agenda forward led to UNISON and CAJ bringing into being what came to be known as the Equality Coalition. The Coalition’s work in helping to secure the Agreement’s human rights and equality gains meant that UNISON, despite the diverse politics of its individual members, could agree to actively campaign for a “yes” vote.

Inez’s work with the lowest paid workers brought her into daily contact with the “divide and rule” tactics of those in positions of power. She worked innovatively and brilliantly to “afflict the comfortable and comfort the afflicted”, understanding that human rights tools empower the seemingly powerless. In her last decade, she involved CAJ and others in founding the Participation and the Practice of Rights, and this work monitoring international human rights standards and holding authorities to account at the local level has since been recognised by the UN as exemplary.

So while we will all miss Inez’s warmth, her laughter, her leadership and her inspiration, we can take some comfort that her legacy will live on in the work her young colleagues in PPR, and those very many people locally and internationally, who were deeply influenced by her principles, her strategic vision and tactical brilliance.

Maggie Beirne, Aideen Gilmore and Martin O’Brien

Call for no interference with Northern Ireland Bill of Rights Process

The Commission on the UK Bill of Rights (CBR) set up in March 2011 to investigate the creation of a “UK Bill of Rights”, delivered its much anticipated report, ‘A UK Bill of Rights: The Choice Before Us’ to the UK Government in December 2012. The main report, Volume 1, addresses a wide range of issues including the International and European human rights landscapes; arguments for and against a Bill of Rights; Devolution and a UK Bill of Rights amongst other things. It is supplemented with eight papers from Commission members, setting out their divergent views on a UK Bill of Rights. Volume 2 of the report is a list of annexes including a consultation summary and examples of Bills of Rights.

The substantive contribution from both reports is the ‘Overview’ in Volume 1, which is designed to be self-contained. On full reading it is evident that this was by no means a consensus report, or indeed a two-way majority/minority split. The title in the Overview of ‘the conclusion of the majority views’ is in fact misleading. By and large, the ‘majority’ opinions were variations on a theme of a UK Bill of Rights. They included different and diverse opinions, with no agreement on what form a UK Bill of Rights might take or what substantive rights it might contain. In fact the consensus minority view (Baroness Kennedy QC and Philippe
contd...

Sands QC) noted that “the majority has failed to identify or declare any shortcomings in the Human Rights Act or its application” in the UK Courts. In short, the CBR has no definite answer as to whether or not there should be a UK Bill of Rights, or what it might look like. Noteworthy, however, is the fact that contributors to both consultations expressed overwhelming support for retention of the Human Rights Act, although the ‘majority’ of Commissioners stated that they ‘have not felt bound by the outcomes of the consultations in terms of purely numerical majorities.’

Bill of Rights for Northern Ireland is part of the ongoing Peace Process

For once a decision in relation to Northern Ireland seems to have been the least controversial, with Commission consensus in relation to recognition of the *separate and ongoing* Northern Ireland Bill of Rights process. The Commission recognised that the outstanding guarantee emanating from the Belfast/Good Friday Agreement is an integral part of the peace process. CAJ amongst many others from Northern Ireland and beyond outlined the political, legal and constitutional positioning of the Northern Ireland Bill of Rights in relation any UK Bill of Rights in an evidence session in Belfast in 2011. Similarly in both the first and second consultations to the CBR from CAJ outlined the genesis of, and cross-community buy in for, this explicit guarantee in the Belfast/Good Friday Agreement, an International Peace Agreement, to which both the British and Irish Governments are guarantors as cosignatories.

Fortunately, the Commission members clearly understood and fundamentally grasped the gravity of the situation, stating:

“We are acutely conscious of the sensitivities attached to discussion of a UK Bill of Rights in the context of Northern Ireland. In particular we recognize the distinctive Northern Ireland Bill of Rights process and its importance to the peace process in Northern Ireland. We do not wish to interfere with that process in any way nor for any of the conclusions that we reach to be interpreted or used in such a way as to interfere in, or delay, the Northern Ireland Bill of Rights process.” (Italics added)

General observations: *The Constitutional Dimension - UK Bill of Rights in relation to devolution in Northern Ireland*

The Commission noted that at the start of their work not all of them fully understood the full implications of devolution in their terms of reference. However, this rapidly became clear and they grasped that perceptions of issues on which they were asked to advise, and indeed of their remit and legitimacy were very different among those whom they met in Northern Ireland, Scotland, and Wales. They noted that calls for a UK Bill of Rights were emanating from England and that there was very little criticism of the European Court of Human Rights or the Convention from other parts of the UK. The Commission was also very clear that any future debate on a UK Bill of Rights must be acutely sensitive to issue of devolution and must involve the devolved administrations.

No issue of ‘ownership’ in Northern Ireland

The Commissions ‘majority’ conclusions noted that the lack of public understanding and ‘ownership’ of the Human Rights Act and the European Convention on Human Rights is the most powerful argument for a new constitutional instrument. The ‘minority’ report noted that it was “...abundantly clear that there is no ‘ownership’ issue in Northern Ireland, Wales and Scotland (or large parts of England), where the existing arrangements under the Human Rights Act and the European Convention on Human Rights are not merely tolerated but strongly supported.”

No Advisors from Northern Ireland

The Commissioners stated as a “*matter of regret* that the devolved administration in Northern Ireland did not nominate Advisory Panel members who might have similarly (like Scotland and Wales) helped us”. CAJ
contd...

and others expressed concern about this with OFMDFM and relevant parties, but no conclusive reason as to why there were no appointments was ever disclosed. This could be interpreted in a number of ways. One, that the Northern Ireland devolved administration accept the literal legal interpretation of the Belfast/Good Friday Agreement as expressed last September by First Minister Peter Robinson that the “responsibility of a Bill of Rights lies with the UK Government.” Or two, that they did not want to be challenged by the UK Bill of Rights Commissioners in relation to an outstanding constitutional guarantee of an international peace agreement, that has overwhelming support from its electorate, and to be questioned as to ‘why not and when?’ it was going to be fulfilled.

(Un)Incorporation of the European Convention on Human Rights and Northern Ireland

Clearly the Commission went beyond its terms of reference in relation to the question in its second consultation as to ‘what extent’ respondents believed that ‘the ECHR should or should not remain incorporated’ into ‘domestic law.’ This was raised by a number of organizations including CAJ. Any reversal of incorporation without an agreed Bill of Rights and fresh incorporation of the ECHR in Northern Ireland would again have complex constitutional and legal implications for human rights protections guaranteed in the Belfast/Good Friday Agreement.

Time to take the Northern Ireland Bill of Rights forward

The overall report on a UK Bill of Rights raises more questions than it answers; however, it is crystal clear in relation to the Northern Ireland Bill of Rights process.

In our first submission to the CBR we noted that it would be a mistake for the UK government to await the next crises in the political process in Northern Ireland to discharge its commitments to take forward a Bill of Rights provided for in the 1998 Belfast/Good Friday Agreement. We believe that recent protests in relation to the Union Flag in Northern Ireland is result from the unfinished business of the peace settlement, in particular a Bill of Rights with concrete socio, economic, civil and political protections.

CAJ once again calls on the Northern Ireland Office and the UK Government to proceed with finalising the Bill of Rights for Northern Ireland.

The Commission on a Bill of Rights Final Report: <http://www.justice.gov.uk/about/cbr>

CAJ’s submissions to the UK Bill of Rights Commission:

http://www.caj.org.uk/files/2011/11/15/S367_CAJs_submission_to_the_UK_Bill_of_Rights_Commission,_Nov_2011.pdf and

http://www.caj.org.uk/files/2012/09/28/S399_CAJs_submission_to_the_UK_Bill_of_Rights_Commission_-_A_Second_Consultation',_Sept_2012.pdf

Jane Winter retirement event

Jane Winter, ex-Director of British Irish Rights Watch, recently gave her farewell speech to an audience at the CAJ offices. Here is a shortened version of her speech:

“Northern Ireland has taught me so many lessons, for all of which I’m grateful, but the one lesson it’s taught me above all is humility. I have learned not to judge. Instead, I have learnt to seek the truth.

“Humility has taught me that hate has its reasons. So has love. So has vengeance. So has forgiveness. Cowardice has its reasons, and so, in abundance, does courage. Morality has its reasons, of course. But the one thing that does not need a reason is the truth. Northern Ireland has been beset by lies, on all sides,
contd...

but once you find the truth – however difficult that may be, whatever the obfuscation or the vindication – it needs no justification. However painful it may be, or, indeed, liberating, or even, on occasion, wonderful, the truth is the truth and the truth will out. And, once it is out, as Martin Luther King and many before him have said, the truth will make us free.”

Jane then thanked the many people who she has had the pleasure of working with over the years and then drew attention to the lessons she has learnt over the years on the relationship between counter-terrorism and human rights.

“Working at BIRW has taught me a thing or two about how not to defeat terrorism. First, terrorism can rarely be defeated by repression, whether military or otherwise. To attempt to do so is to descend to the level of the terrorist, which is never acceptable in a democratic society. In such a society, higher standards are rightly demanded of governments than those that can be expected of terrorists. Once that principle is abandoned, the terrorists will have won, because they will have destroyed democracy.

“Secondly, terrorism is not usually mindless. Attacks may be unannounced; their consequences may be unspeakable; they may be morally indefensible; we may not understand them; and we may disagree with them profoundly; but they are usually done for a reason, however misguided. Very often that reason has its foundations in ignorance, poverty, or injustice, or some combination of the three. Those who turn to terrorism may be fanatics or bigots, but it is important for the targets of terrorism to be objective and honest when addressing the inevitable and legitimate cry of the victims, ‘Why us?’ Once again, we must be truthful.

“Thirdly, repressive laws – and there is an abundance of them in the UK – do not prevent terrorism or eradicate it. If we treat terrorists differently from other criminals because of the motive for their crimes we only create miscarriages of justice and martyrs to the cause.

“Fourthly, although governments often seek to portray themselves as neutral in combating terrorism, they are never so in fact. Governments’ job is to defend the state and maintain the status quo – this is far from being a neutral role. In our experience in Northern Ireland, successive governments and the agents for whose actions they are responsible have not only pursued their own agendas, but in some cases have actively colluded with paramilitaries in that pursuit. Far from hastening the end of the conflict, such policies have deepened and prolonged it.

“Fifthly, and this is the saddest lesson of all, governments do not learn from their mistakes. History tells us that those who cannot learn from their mistakes are doomed to repeat them, and that is unfortunately true, not only in Northern Ireland, but in Iraq and Afghanistan, and many other countries around the world.”

Significantly, Jane drew on the Baha Mousa case to show “how the five techniques deployed in Northern Ireland during internment in the 1970s were exported to Basra in the 2000s with deadly consequences. We have also worked, together with a broad coalition of other NGOs, against the use of torture and other human rights abuses by British soldiers abroad. And here I would just like to pay tribute to Gareth Peirce, Phil Shiner and all the other English lawyers who are fighting for justice not just in Iraq and Afghanistan, but in Kenya, Malaysia and elsewhere.”

She ended by stating that “justice...needs no justification. That is what BIRW is about, and has always been about for the past 22 years. I am now bowing out, but everyone I have met and learned from will remain in my heart always and I thank you all most humbly.”

Arbitrary Stop and Search: still part of life here?

Stop and search powers are routinely used by police services across the world and can be an entirely legitimate law enforcement tool when police officers have good reason to suspect an individual may be carrying something unlawful. Human rights concerns are engaged when stop and search/question powers are used in an arbitrary and discriminatory manner.

CAJ has recently published new research which poses a question we had asked almost twenty years ago. In 1994 CAJ published 'Its Part of Life Here' a survey of young people on the question of security force harassment, including through unnecessary use of stop and search/question powers. In the intervening period the situation has changed. There is no longer the widespread deployment of soldiers or vehicle checkpoints. However, official figures show similar emergency-type powers (under the Justice and Security Act 2007 and Terrorism Act 2000) were still used over 22,000 times in the 2010/11 reporting year and this report seeks to ascertain whether, for some, being routinely subjected to the powers unnecessarily is 'still part of life here'.

In CAJ's view far from being an effective 'deterrent', if the main interface of members of a community with policing is being subjected to unnecessary stop and search/question operations, such practices are likely to fuel conflict rather than prevent it. CAJ in the past has raised concerns about the impact of stop and search powers, particularly in relation to when powers were used ineffectively, unnecessarily or as a form of harassment. Our 2008 *War on Terror: Lessons from Northern Ireland* report concluded the experience here was not only that "stop and search operations rarely produced anything of immediate value" but that "deterrence" as a justification for the powers was not effective. The use of these powers by the PSNI also seems ineffective with arrest rates well under 1%. It is not clear if the arrests actually relate to 'terrorist' (scheduled) offences or other matters, including resisting the stop and search. The PSNI also does not collect figures relating to any subsequent charges or convictions, indicating that the police themselves do not actually evaluate how effective the powers are in relation to the results they produce.

It appears the PSNI have a particular policy of wide deployment of the powers to preventively 'disrupt' potential dissident republican activity. This approach may be incompatible with the legislation. The legislation indicates that this power should only be used to genuinely search for specific items such as weapons. It would also be problematic if persons are targeted on the basis of low-level police intelligence information, insufficient to reach the threshold of reasonable suspicion, which relates to legitimate political affiliations or activities rather than evidence of unlawful activity.

A Code of Practice which sets out the parameters and requirements in relation to the use of stop and search/question powers over and above what is on the face of the legislation is usually provided as an essential safeguard against arbitrary exercise of powers. It is remarkable that despite Justice and Security Act powers having been used since 2007 no code of practice had ever been issued. The present CAJ report urged the Northern Ireland Office to consult on a Code of Practice as a matter of urgency. We are pleased to report that a draft code is currently out for consultation until 6 March. Whilst there are many welcome elements within it one obvious omission from the draft is provision for ethnic monitoring of stop and search/question on grounds inclusive of community background. This is despite such monitoring being an essential tool to ensure powers are being used proportionately, and CAJ hopes this omission will be remedied in the final code.

CAJ's Report 'Still Part of Life here' can be read at: <http://www.caj.org.uk/contents/1148>
The NIO consultation can be accessed at: <http://www.nio.gov.uk/Public-Consultation/Current-Consultations>

Civil Liberties Diary - November and December

2 November

Prison Officer David Black was murdered on his way to work. He was driving on the M1 Motorway when a car pulled up alongside him and a gunman fired a number of shots, killing Mr. Black. Dissident republicans who had been staging a series of protests outside Maghaberry Prison are suspected to be behind the shooting.

A second high-level probe has been ordered into potential fraud in the fire service. The probe will investigate allegations about potential fraud, theft, misuse of resources and other irregularities.

5 November

Concerns have been raised that the regional NHS fertility clinic, based at the Royal Victoria Hospital, is not subject to oversight by a health watchdog. The watchdog routinely inspects hundreds of NHS and private health and social care facilities.

6 November

A report by the Audit Office has raised concerns regarding irregularities in the accounts of five Stormont departments. The report found salary hikes awarded without proper approval, and the spending of millions of pounds without official approval, among other financial discrepancies.

A new school catering for children, ages 3-19, with severe learning difficulties and disabilities has opened in east Belfast. The fit-for-purpose school has facilities for 150 students and 80 staff.

7 November

The education minister, John O'Dowd, has proposed bringing experienced school principals in to take over failing schools, with salaries that reflect the size of the challenge they face. He has also called for an independent audit of the entire education system, stating that too many children are not well served by the system.

8 November

Police have been ordered to operate a zero-tolerance policy in the lower Falls area. The area, described by residents as a 'no-go area' after dark, has seen significant increases in car crime, street drinking, vandalism and burglaries.

13 November

The Police Federation reported that an extra 1,000 officers are needed to combat the terror threat from dissident republicans. Additionally the union has stated that judges must operate a zero tolerance policy by handing out maximum sentences to anyone convicted of terrorist offences.

14 November

The High Court ruled that DNA samples and fingerprints of convicted offenders can be kept indefinitely by the police. The case attempted to establish that the policy breached privacy rights. Had the case succeeded, police forces would have been forced to destroy millions of DNA samples.

23 November

On average, public sector workers in Northern Ireland earn 45% more every week than workers in the private sector. For

female workers, the difference between public sector and private sector salaries is 71%. Despite the pay freeze in the Civil Service, the pay gap keeps growing.

27 November

Maghaberry Prison will be broken into three mini-prisons. Remand prisoners awaiting trial and those convicted but posing a lower risk will be separated into their own sections, fully separated from inmates posing the greatest danger. This reconfiguration will allow the prison to deliver tailored services to specific groups of prisoners.

3 December

Pensioners in Northern Ireland are missing out on up to £200million a year in unclaimed benefits. Thousands of pensioners are consistently failing to apply to government funds – such as pension credit and housing benefit – that they are entitled to.

4 December

Belfast City Council voted to fly the union flag from City Hall on selected days rather than every day. After the vote, loyalists stormed the grounds of Belfast City Hall. The protest continued with rioting in east Belfast later in the evening.

5 December

The opening of Northern Ireland's new Critical Care Building is delayed after a cleaning agent corroded some of the building's pipework. When opened, the facility will provide emergency and trauma services

contd...

Civil Liberties Diary contd. (December)

for severely injured people across Northern Ireland.

6 December

Judge David McFarland ruled that press photographers must hand over to police all material relating to riots in Belfast last summer. The judge ruled that the photographs would be of substantial value to police in identifying and prosecuting rioters.

10 December

Up to 3 million pounds have been lost so far by traders as a result of the flag protests and riots.

Three 13-year-old boys were the youngest of the 34 people held in connection with the violence, with 26 suspects charged already. 28 police officers have been injured in the violence.

Police have reported that paramilitaries are taking part in the protests and riots, though the trouble has not been tied to any one paramilitary organisation.

11 December

Fifteen men are charged with attempted murder in connection with the riots surrounding the flag protests. The men smashed the back window of a police vehicle and threw a petrol bomb into it, while an officer was sitting in the front seat, guarding the offices of Alliance MP Naomi Long.

The Historical Institutional Abuse Bill, determining the remit of the new investigation,

was passed by the Assembly. Under the legislation, anyone who refuses to cooperate with or impedes the process of an inquiry into historical child abuse could be jailed for six months or fined £1000.

12 December

The latest census revealed that more than one in five people here consider themselves Northern Irish, rather than British or Irish. 40% of respondents considered themselves British, 25% considered themselves Irish, and 21% considered themselves Northern Irish. Additionally, the population gap between Catholics and Protestants continues to narrow, being only 3%.

13 December

The report of a government review of the death of Patrick Finucane was released. The 500-page review reported that there were three UDA conspiracies to murder the Belfast solicitor – in 1981, 1985, and 1988/89 – and on none of these occasions was he warned about the threat to his life. The report stated that had it not been for the involvement of the state, Patrick Finucane more than likely would not have been killed by the UDA in 1989.

17 December

Peace campaigners in Belfast staged two rallies to demonstrate their opposition to the unrest. The gatherings were promoted by social networking sites and had obtained permission from the PSNI. The gathering was made of people from both communities who wanted to condemn the escalating violence from the flag protests.

The Criminal Justice Inspection reported that prison authorities at Maghaberry Prison are not doing enough to protect prisoners from violent bullying and intimidation. The report claimed that the issue was with how prison officers interacted with inmates and that there was a lack of adequate supervision.

20 December

Peter Robinson and Mike Nesbitt launched a Unionist forum aimed at bringing an end to the street protests. In addition to the flag issues, the forum also addressed ways to increase voter turnout in unionist areas, plans to deal with parading flashpoints, and the creation of a blueprint to address underlying socio-economic issues in loyalist areas.

Compiled by Elizabeth Super from various newspapers

Just News

Just News welcomes readers' news, views and comments.

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

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

2nd Floor, Sturgen Building
9-15 Queen Street

Belfast

BT1 6EA

Phone: (028) 9031 6000

Text Phone: 077 0348 6949

Fax: (028) 9031 4583

Email: info@caj.org.uk

The views expressed in Just News are not necessarily those of CAJ.