

Don't DeCommission Equality!

11 June saw the launch of new CAJ research entitled '*Unequal Relations? Policy, the Section 75 duties and Equality Commission advice: has 'good relations' been allowed to undermine equality?*' Around 60 persons from public authorities, trade unions, equality NGOs and the Commission attended a launch event hosted by UNISON, who co-convene the Equality Coalition with CAJ.

The research found that a combination of factors, including decisions and advice by the Equality Commission, have led to a situation whereby equality initiatives, and the purpose of the Section 75(1) equality duty and their Equality Impact Assessments (EQIAs), have been undermined by the present interpretation and application of the section 75(2) 'good relations' duty.

This report followed shortly after the publication of the new community relations strategy '*Together: Towards a United Community*'. This plans legislation to formally add the Good Relations duty to Equality Impact Assessments and to transform the Commission into an 'Equality and Good Relations Commission.'

CAJ and other members of the Equality Coalition lobbied hard to get the statutory equality duty into the Belfast/Good Friday Agreement fifteen years ago. The Agreement actually made no reference to 'good relations' (rather envisaging the Equality Commission overseeing a duty to promote 'parity of esteem'). Nevertheless section 75 of the Agreement's implementation legislation did introduce a 'good relations' duty. In response to concerns that equality initiatives would be thwarted by practices that might lead to 'community tensions' Parliament did subordinate the 'good relations' duty to its equality counterpart in section 75. The legislation also provided for impacts assessments on the equality limb of the duty only.

Nevertheless in 2007 the Equality Commission recommended public authorities conduct equality and good relations impact assessments, using the same methodology for good relations as had been designed for equality impacts. CAJ's research finds that this is problematic given that objective concepts such as 'adverse impact' on equality grounds are now being applied to the more politically subjective concept of 'good relations'. This risks objections to measures taken to implement the equality duty, even those based on prejudice, being elevated to the status of an 'adverse impact' and the public authority being consequently advised it must consider 'alternative policies' or mitigating measures. CAJ's research found that this had happened in examples relating to policies seeking to tackle disadvantage on the basis of objective need and policies promoting the Irish language. It also demonstrated that the current interpretation of the section 75(2) 'good relations' duty is having a demonstrable practical impact in thwarting the implementation of particular equality and rights based initiatives.

The research recommends that any legislation emerging from the *Together* strategy is not regressive to the equality duties and ensures that the term good relations is defined and interpreted in accordance with international obligations. The research also recommends the Equality Commission review aspects of the advice it gives in relation to the existing 'good relations' duty.

Contents

Don't DeCommission Equality!	1
Rights on the Street	2 - 3
Poverty and inequality still there after G8	3 - 4
Developing the Belfast Guidelines on Amnesty and Accountability	4 - 5
FIDH conference in Istanbul	6
Human rights and social justice	7
Civil Liberties Diary	8

Rights on the Street

CAJ has recently published two new rights guides, “Stop and Search: A guide to your rights if stopped, questioned and searched by the PSNI” and “Protesting and Parading: A guide to your rights to freedom of assembly in Northern Ireland.”

Both these guides deal with the rights and freedoms of ordinary persons in using the public spaces of Northern Ireland, including its streets. They deal with the circumstances in which ordinary people are likely to come in contact with the police, whether going about their normal business or when exercising their right to freedom of Assembly.

The Stop and Search Guide explains that “There are different types of stop and search powers under ‘ordinary’ law, and powers under ‘terrorism’ or ‘emergency’ law. Under ‘**ordinary**’ law powers the police must have “**reasonable suspicion**” for stopping you. Under ‘**terrorism**’ or ‘**emergency**’ law powers other rules can apply. Some emergency law powers can also be used by soldiers. These are explained in this leaflet.”

The Guide gives general advice on how to behave if stopped by the police. This includes:

- Keep calm and ask for the **identity number** and **police station** of the officer;
- **Ask** the police to state **the exact power they are using**. If they are **not** using any power, then you may either voluntarily respond to their questions or you can ask if you are free to go;
- If the search requires ‘**reasonable suspicion**’ you can ask what that suspicion is;
- Ask what the purpose of the search is and what **entitlements** you have;
- Ask for a **record** of the **stop/question/search**. If you are denied a record, you can make a note of the details of the stop/question/search yourself;

The Guide goes on to list the various powers that the police have according to the law. The basic division is between those powers which require “reasonable suspicion” that an individual is or may be about to commit an offence and those that do not require individual suspicion. The latter are included in “anti-terrorism” legislation on the whole. Although it cannot offer definitive legal advice, the Guide does go into some detail on the legislation. It also considers ways in which the use of stop and search powers can breach an individual’s rights.

It notes that “Stop and search powers are used by all police services and can be a **lawful tool** to search you when there is good reason (reasonable suspicion) to think you might have, for example, stolen something. Powers to stop, question and search people are problematic when they are widely **used in a random way (without any good reason) as a tool of harassment** rather than to genuinely search for prohibited items. This is because in these circumstances the powers can lead to unnecessary **intrusion by the police into your right to a private life**. If you are more likely to be stopped because of your **ethnicity** or **community background** this may also be a violation of your rights. Stop and search powers used in such a **discriminatory manner** often create a ‘**suspect community**’ and are a form of racial discrimination known as ‘**racial**’ or ‘**ethnic**’ profiling.”

contd...

The Freedom of Assembly Guide has particular significance in Northern Ireland, given the prevalence of parading, and is especially relevant after recent public confusion about the law in respect of public order situations. People often exercise their right to freedom of assembly in the context of protesting about some decision or state of affairs. The Guide offers the following advice about what you can and cannot do:

“Your right to peaceful protest means:

You can:

- gather with others on public property in order to protest;
- ask a public authority for permission to protest on property owned by it;
- display placards, use chants or play recordings even when they may in some cases offend, shock or disturb others; and
- ask the police to facilitate your right to protest. For example, you may need traffic management measures to be put in place. So long as your request is possible and reasonable, the police should assist you in your right to protest.

You cannot:

- behave in a manner (e.g. through placards, chants, songs) which is racist, sectarian, homophobic – the law prohibits incitement to hatred against a group of people on grounds of religion, ethnicity (eg colour, nationality), sexual orientation and disability;
- behave in a disorderly manner;
- wear uniform indicating your association with any paramilitary organisation;
- intentionally obstruct or seek to obstruct traffic or any lawful activity of others.”

The Guide explains how the Human Rights Act and specific Northern Ireland legislation interact to protect but also regulate freedom of assembly. There is a requirement here to notify the Parades Commission about any moving assembly, whether of witness, protest or celebration. There is no requirement to notify the authorities about a static protest unless it is a counter-protest to a parade or march. The Guide also indicates when and how the police can regulate freedom of assembly.

Read these guides and you will know your rights when you walk the streets of Northern Ireland!

Poverty and inequality still there after G8

As the G8 circus packs up its limousines, helicopters and Lough Erne declaration what are we left with?

The attention paid to tax transparency for countries and multi-national corporations is welcome though the final accord contained far too many promises that the G8 members should meet and not enough commitments that will be met. There was a sense that the UK government threw itself into the issue too late to get a binding and irrevocable agreement.

Some salient facts reveal the context in which the G8 is working:

- The richest two per cent have more wealth than half of the rest of the world. The richest one per cent has 43 per cent of the world's wealth.
- The bottom 80 per cent has just six per cent of the world's wealth.
- The richest 300 people have the same wealth as the poorest three billion.
- Two trillion dollars (\$2,000,000,000,000) flow each year from poorer countries to richer countries each year through trade rules, large corporations' tax avoidance, cheap labour and debt;
- Life expectancy in Switzerland and Japan is an average of 83 years. In Sierra Leone the figure is 47 years;
- Rich countries waste as much food as the total food production of sub-Saharan Africa; *contd...*

Global inequality remains mind-blowing and its impact on the individuals affected is stark, and life-threatening.

The situation closer to home is also one of enormous economic inequality with grim consequences and a price tag to match.

The Centre for Research in Social Policy at Loughborough University has just published research estimating the current cost of child poverty in the United Kingdom is £29 billion. The figures cover:

- £15 billion spent on services to deal with the consequences of child poverty (eg social services, criminal justice and extra educational support);
- £3.5 billion lost in tax revenue from people earning less as a result of leaving school with low skills linked to having grown up in poverty;
- £8.5 billion lost to individuals in net earnings.

The Institute of Fiscal Studies report commissioned by OFMDFM and published in June 2013 warned that one in four children (3.4 million) will be in relative poverty by 2020. This coincides with the date by which the UK government promised to eliminate child poverty. The commitment made by the Labour government in 1997 has never been disavowed by the coalition government.

Economic and social rights are indivisible from civil and political rights. This is a mantra that has often been advanced by the UK government within its foreign policy but much less frequently heard on the domestic stage. The UK government has a potential agenda to implement a number of international human rights instruments covering economic and social rights. The European Court of Human Rights has recently held in *Stec v UK* (2005) that:

‘whilst the convention set forth what are essentially civil and political rights, many of them have implications of a social or economic nature. The mere fact that the interpretation may extend into the sphere of social and economic rights should not be a decisive factor against such a decisive interpretation; there is no watertight division separating this sphere from the field covered by the Convention’.

This is the backdrop to the need for a Bill of Rights addressing economic and social rights. Let’s hope that by the time the G8 gathers again the figures on global inequality and poverty and inequality across these islands makes better reading than it does now.

Les Allamby, Law Centre (NI)

Developing the Belfast Guidelines on Amnesty and Accountability

In Northern Ireland, as in other societies struggling to deal with a legacy of a violent past, when, how and for whom amnesties can be used is often a highly controversial issue. While these debates may arise at the time of a political transition, they often endure for many years after a conflict has formally ended. At the domestic level, controversies can centre on political contestations over the nature of past crimes, the identification of the individuals and institutions responsible for committing them, and whether individual amnesties can be traded in exchange for cooperation with investigative processes or other peacebuilding measures.

contd...

The extent to which amnesties violate states' obligations under international human rights law is increasingly a key element in domestic debates, particularly where an amnesty risks undermining the rights of victims to truth, justice and reparations. At the international level, despite their long history as conflict resolution tools, over the past two decades, amnesties for international crimes and serious human rights violations, such as violations of the right to life and prohibitions on torture, are increasingly seen as conflicting with states' duties to investigate, prosecute and punish under international law. However, as yet, states have been unwilling to agree an absolute prohibition on amnesties for any crimes. Furthermore, the European Court of Human Rights has not yet directly considered the status of amnesties under the European Convention on Human Rights. As a result, to some degree, the legal status of amnesties under international law remains open to interpretation.

To address these dilemmas on the use of amnesty in Northern Ireland and overseas, Louise Mallinder and Tom Hadden at the Transitional Justice Institute are leading a project to develop the Belfast Guidelines on Amnesty and Accountability. This project, funded by the Nuffield Foundation, has brought together a high profile group of international human rights and conflict resolution experts who are representative of the main world regions and of diverse approaches to issues of amnesty. This group are collectively authoring the Guidelines which will set out when, how and what forms of amnesty can be used to deal with the legacy of a violent past. The Guidelines will draw on a wide range of evidence including international treaties, the case law of international courts, United Nations declarations, peace agreements, national amnesty legislation and the case law of national courts. The goal of developing these Guidelines is to investigate how amnesty laws can be designed to maximise the protection of human rights within transitional societies in contexts where it is not possible to prosecute large numbers of offenders.

The Guidelines will address a number of key issues. Firstly, they will clarify when and what forms of amnesties are permitted under international law. In particular, the Guidelines will address how amnesty can be used to complement selective prosecution strategies. Secondly, to maximise accountability, the Guidelines will address how individual grants of amnesty can be conditioned on participation in non-judicial forms of accountability such as truth commissions, restorative justice programmes, public inquiries and reparations programmes. Thirdly, the Guidelines will aim to explore how amnesties can complement other peacebuilding measures, such as disarmament and preventing recidivism. Fourthly, with respect to ensuring the transparency and legitimacy of any amnesty process, the Guidelines will consider the ways in which there can be public engagement with the design of amnesty processes and victims can participate in decisions to grant amnesty in individual cases. Fifthly, the Guidelines will consider the possibility of the removal of amnesty, either based on individual non-compliance with the conditions of the amnesty programme, or the enactment of legislation to annul a pre-existing amnesty.

It is hoped that the Guidelines will be an important and useful resource for international and national policymakers, civil society activists, legal professionals, and scholars who engage in debates on the enactment or evaluation of amnesties. The Guidelines are now in the final stages of drafting and they will be made available on the Transitional Justice Institute website in late autumn 2013.

Dr. Louise Mallinder, Transitional Justice Institute, University of Ulster

FIDH conference in Istanbul

At the end of May human rights activists from all over the world came together in Istanbul, Turkey for the Congress of the International Federation of Human Rights (known as FIDH from its French title). The Congress takes place every three years and brings together activists from more than 100 countries. At this Congress 14 new member organisations were accepted bringing the total membership to 178. CAJ is a long standing member of FIDH and Brian Gormally attended on its behalf.

The Congress also involved a conference on “Human Rights in Countries in Transition” which looked at experiences from those countries currently experiencing political upheavals and growing popular movements. The Congress was addressed by the President of Turkey who received a strong message about the persecution of journalists and human rights defenders in that country. Unconnected with the Congress, but immediately after it, the Taksim Square mass demonstrations against the majoritarianism of the current Turkish government erupted.

The newly elected President of FIDH, exiled Iranian lawyer, Karim Lahidji, called on the Turkish authorities “to free all the journalists, lawyers and trade unionists who have been arbitrarily detained, in particular Muhammet Erbey, President of the Diyarbakir section of IHD who has been in prison since December 2009 for having denounced human rights violations against the Kurdish minority.”



At all sessions of the Congress an empty chair was placed at the top table to symbolise the absence of imprisoned human rights defenders.

picture taken from <http://fidh-inside.tumblr.com/post/51808664648>

Human rights and social justice

Social justice is the term many community activists use to define the goals of their work. In this extract from a speech given to a community organisation last year Brian Gormally, CAJ's Director, looks at the relationship between social justice and human rights.

There are many definitions of social justice, but the way I see it is the attempt to use the principles of human rights – which are the principles of justice – at the community level, at the level of everyday life. This is particularly relevant when we look at relations with the state.

We tend to think of the state as police, military, courts and prisons but it also includes a range of institutions with which we interact in our daily lives – schools, hospitals, local government, dole office and so on. These institutions have a major impact on the way we live and can certainly commit human rights abuses or fail to prevent them. There is a whole array of human rights in the social, economic, cultural and environmental areas which are directly relevant to community living. These are enshrined in international treaties but, unfortunately, not usually in UK domestic law. In passing, we should note that the advice on a Bill of Rights for Northern Ireland that the Human Rights Commission presented to government, and which has been cavalierly rejected, contained a range of important social and economic rights. However, that does not stop individuals from campaigning and using these rights as a guide and a set of tools.

Some people reject the idea of social and economic rights because “elected politicians should be taking these decisions, not judges.” In fact that position completely misunderstands the nature of these rights. First, let us be clear that elected politicians are not elected dictators. They too are bound by the rule of law and the need to take decisions in a fair, just and equal way. The right not to be discriminated against, for example, regulates the way millions of government decisions are taken. Second, substantive social rights, like the right to education, are subject to the idea of “progressive realisation.” This simply means that government is under an obligation to work towards the full implementation of such a right, in the context of available resources and within a reasonable timescale. Sensible and just politicians have nothing to fear from social and economic rights – sectarian and corrupt ones might have.

In fact, the idea of working for social justice also recognises that the law is not enough. Human rights are based on law and legal action, especially strategic litigation that affects many people, not just one case, can be extremely important. But there will also always be a need for campaigning – to change a bad law or decision, to force the implementation of legal decisions or to win the adoption of human rights standards by institutions. Organised citizens need to campaign for rights and justice – the courts will not hand them to us.

The role of human rights is to regulate power – at a community level as well as in those situations where the state has nearly total power over an individual, such as in a prison. As I've said, many institutions of state have power over us in our daily lives. Human rights can be used not just as a mechanism to challenge the exercise of power through the decision making process but can also be argued for as a structure or framework for making the decisions themselves. The Section 75 equality duty is an example of a formal framework that governs how decisions should be taken in conformity with the human right not to be discriminated against.

It is important that people organised at community level know their rights in relation to all the institutions of the state that have power over their daily lives. It is equally important that we recognise that human rights are for everyone, not just “one side” or a vocal minority. If we develop a common appreciation of human rights, and if we get used to putting them into practice in the pursuit of social justice, we will all live and work in a framework that transcends the differences in ethnicity, background and identity that might otherwise divide us.

Civil Liberties Diary - May

1 May

Stormont has missed the deadline to agree to the Defamation Bill 2012-2013. The bill, intended to balance the new restrictions imposed by the Leveson Inquiry, provides for protections for freedom of the press.

2 May

The Drivers and Vehicle Agency Northern Ireland sold the personal details of almost 18,000 individuals to car park operators and private companies in the past year. The data includes the full names and addresses of drivers, which has been supplied to the DVA for purposes of road tax and the MOT.

239 people have been arrested and 182 charged with public order offences in connection to the flag protests that begin last December. The protests cost over £20 million to police.

The Secretary of State has contacted the leaders of the Stormont parties regarding the possible future transfer of four quangos currently under Northern Ireland Office control. The quangos include the Northern Ireland Equality Commission, the Northern Ireland Human Rights Commission, the Northern Ireland Civil Service Commissioners and the District Electoral Areas Commission.

3 May

The chief executive of the Northern Health and Social Care Trust, Sean Donaghy, has stepped down from his post to take up a new post as the regional director of eHealth and External Collaboration. The Northern Health and Social Care Trust is one of the worst-

performing health trusts in Great Britain and Northern Ireland and has been severely criticised for unacceptable breaches.

7 May

DUP Finance Minister Sammy Wilson has ordered the erection of five additional flagpoles on government buildings to fly the Union flag on selected days.

The Phoenix Integrated Primary School in Cookstown advertised for a teacher who must hold a Certificate in Religious Education. The certificate, required for teaching in a Catholic school, does not require Catholic affiliation. The Department of Education concluded that there was no statistical evidence to suggest the certificate requirement resulted in inequalities in education.

10 May

Reported sexual assaults and domestic violence against women and children in Northern Ireland has increased by 6 per cent in the past year. Hate crimes rates have also risen significantly in the past year.

The First Minister and Deputy First Minister have released their proposals for building a shared future. The proposals include four urban village regeneration projects, 10 shared neighbourhood developments, as well as 10 shared education campuses. The proposals were met with scepticism as they contained little detail and are not yet funded.

14 May

The OFMDFM has failed to answer six Freedom of Information requests. By law, the Office had 20 days to answer the requests. However, they remain outstanding over two years later. The OFMDFM

is one of four public bodies in the UK that is monitored for chronic breaches of the Freedom of Information Act.

20 May

Police, political leaders and community representatives met for two days of discussion in Wales. The talks resulted in an agreed statement affirming a commitment to dialogue and non-violent protest for the forthcoming marching season.

23 May

Lisburn City Council has used cash earmarked for the promotion of good relations to pay for a meeting of the Unionist Forum. Though the City Council stated that it hoped to facilitate understanding and dialogue through the event, the Forum was criticised for not including multiple political opinions.

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.