

Just News

Human Rights in Northern Ireland

Racist Violence and Criminal Justice in Northern Ireland

Research recently commissioned and published by the Northern Ireland Council for Ethnic Minorities (NICEM) paints a worrying picture in relation to racist hate crime in Northern Ireland and the state's response to it. NICEM had been documenting every complaint of racist harassment that came to them since 2002 in meticulous detail. The resulting stories of 162 victims and survivors of racist violence are testimony to just how routine racist violence has become in Northern Ireland.

While the scale of the violence is frightening enough, the failure of different elements in the criminal justice to deal effectively with it is just as problematic. The report *"The Next Stephen Lawrence? Racist Violence and Criminal Justice in Northern Ireland"* finds unambiguous evidence of institutional racism right across the criminal justice system in Northern Ireland.

Two years after the *Criminal Justice (No. 2) (Northern Ireland) Order 2004* was presented as the solution to the rise in racist violence, no-one has been prosecuted - let alone convicted - of racist hate crime. The report makes a whole series of recommendations for reform, but these are predicated upon the demand for a MacPherson-style review into racism and criminal justice across the criminal justice system – piecemeal changes will not be enough.

It is also important that the human rights community and relevant international human rights mechanisms - such as the Convention on the Elimination of all forms of Racial Discrimination, the Office of the High Commissioner for Human Rights and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance - are used effectively to produce the necessary change in government policy and practice.

As the title of the report suggests, the murder of Stephen Lawrence and the MacPherson report into his death weigh heavily on the situation. It was very fitting therefore that Stephen Lawrence's mother Doreen said at the launch of the report: *'In Britain things have improved since the McPherson report but there is still a long way to go. It seems from this report that in Northern Ireland you have even further to go.'*

Imran Khan – the Lawrence family lawyer – used the launch to address the importance of the Lawrence campaign: *'The Lawrence case inspired many people who had otherwise given up hope of justice. In the past, victims of crime would never go to a lawyer.... But you also need a criminal justice system that is prepared to acknowledge and address institutional racism. From the evidence in this report, you haven't got that yet.'*

Of course, there has been a great deal of hyperbole around the rise in racist violence across Northern Ireland. We need to be careful not to reproduce this in a way that does little to help victims and survivors. So headlines like 'Northern Ireland - the race hate capital of Europe' and 'Belfast, the most racist city in the world' have to be treated with a great deal of caution. The recent figure of sixty eight racist murders in Britain since the death of Stephen Lawrence puts our local situation in some context.

But there are other dimensions to the rising racism in Northern Ireland that do make our situation qualitatively different from that in the south of Ireland or Britain or most of the rest of Europe. For example, the PSNI and IMC have now acknowledged the role played by loyalist paramilitary organisations. More worrying is the apparent inability of the state to do anything about the rise in racist violence. Disturbingly, and despite the many horror stories of racist violence across the continent, a state which buries its head in the sand and does nothing to address mounting racist violence is deserving of especial opprobrium. Such a state might well justify the sobriquet 'race hate capital of Europe'.

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The report is available from NICEM 02890 283645 priced at £15.

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G8 and civil society – a report from Russia

In the lead-up to this year's meeting of the G8 leaders, Russia – as holders of the presidency – took the unprecedented step of convening a major international conference of civil society organisations, the deliberations of which were to feed into the G8 discussions. The conference was unusual to the extent that while it was administratively organised and funded by the government, Russian civil society organisations were given the lead and autonomy to choose the topics to be discussed, and identify domestic and international contributors on these topics.

Thus, while human rights was not on the formal G8 agenda, Russian NGOs took the opportunity to draw attention to this issue, in light of the fact that President Putin had undertaken to attend the conference to listen and respond to the deliberations of each of the roundtables, and to bring these to the attention of his G8 colleagues.

In this respect, CAJ was invited to contribute the lessons from Northern Ireland to a roundtable on "Terrorism, Counter-Terrorism, Armed Conflicts and Human Rights." This roundtable was extremely well attended by high level representatives from leading international human rights groups, as well as domestic NGOs, and provided an excellent opportunity to draw together some key principles on the protection of human rights in the current context of the "war on terror".

In making its presentation, CAJ was able to draw extensively on the submission we produced for the visit of the Eminent Jurists Panel to Northern Ireland earlier this year on this very topic (see Just News, May 2006). As such, we highlighted the learning from Northern Ireland in relation to the failure of the policy of detention without trial, the use of coercive interrogation techniques, the corrupting effect of "emergency" measures on the criminal justice system and the ongoing repercussions of excessive use of force and shoot to kill policies.

More importantly, we highlighted the initiatives introduced in Northern Ireland which, if introduced even earlier, would have been very important bulwarks in ensuring security and human rights. These included the audio and video recording of interviews, early and frequent access to medical examinations, and to independent legal advice. External oversight of the police and the various criminal justice agencies, including independent complaints systems; a clear legal framework for their activities with professional codes of conduct and strong disciplinary mechanisms; transparency in the process of appointments and a workforce broadly representative of society as a whole; and effective legal and democratic accountability – all contribute to the creation of a policing and criminal justice system that is human rights compliant and works equally and fairly for all.



President Putin addressing the Civil G8 conference

The conference was an interesting event, and it is clear that the context was more complicated than originally anticipated. In particular, Russian human rights NGOs have found themselves in crisis as a result of a law recently introduced by the government preventing them from accepting any source of international funding, and toughening procedures for registration and reporting for NGOs, which many fear would allow government to unreasonably and unlawfully interfere with activities of NGOs.

While the conference did allow domestic NGOs the space to raise these concerns, and draw upon international support in doing so, it was clear from President's Putin response to this concern that the government under his leadership remains determined to pursue this policy:

"I will always oppose and combat...having foreign governments finance political activity in our country, just as our government should not finance political activity in other countries. This is an area for our citizens and for their own organisations."

One positive outcome from this conference could be potential pressure on other G8 countries to organise similar events under their presidency, which – if it happens – would provide an opportunity for civil society to more effectively input to these notoriously closed discussions of some of the world's most powerful leaders.

Take the Bill by the Horns!

The revelation by the NI Human Rights Commission that complaints received by them regarding human rights abuses in Northern Ireland have more than doubled in the past year would suggest that human rights are still a burning issue in Northern Ireland. We suggest that what is lacking is an agreed frame of reference within which to discuss and address these breaches of human rights. We still have not reached a collective point of agreement on what is right and fair for this society.

Not that this is unusual – issues such as these are customarily grappled with in societies emerging out of conflict and require time. Our own tailored yardstick for human rights, the Bill of Rights for Northern Ireland, has been in the process of development for some years now. The Good Friday (Belfast) Agreement 1998 made provision for a Bill of Rights. All sectors of society are in favour of a Bill of Rights, as demonstrated by the substantive consultation carried out by the NIHRC itself. Since then much work has been done to progress it. The Northern Ireland Human Rights Commission's extensive consultation process and the reconstituted Commission continues to prioritise work on the Bill of Rights.

The Human Rights Consortium, a coalition of over one hundred community groups, non-governmental organisations and trade unions, which campaigns for a strong and inclusive Bill of Rights for all, has sought to raise awareness of and participation in the Bill of Rights process among civic society, political parties, churches and other sectors. More recently the political parties have been discussing the Bill of Rights in the Preparation for Government Committee. The all-party commitment to "the creation of a Bill of Rights for Northern Ireland" (Hansard, 11/8/06) is to be welcomed, even if there may be continuing uncertainty about the best way to proceed.

The obvious next step is to get everybody talking to each other about the Bill of Rights. Clearly there will be many different understandings as to the purpose of the Bill of Rights, its scope, its content, how it should be enforced etc. For some the starting point will be responding to the 'particular circumstances' of Northern Ireland, for others it will be identifying the gaps in protections currently provided by the European Convention on Human Rights. Some will want to focus on rights for individuals, others on group

rights. Even more are likely to focus on their lived experience, whether that be of poverty, discrimination, disability or exclusion from society in a whole range of ways. These different viewpoints on the Bill of Rights are important and need to be heard. To quote Mary Robinson, a former UN Commissioner for Human Rights "A discussion of rights is complex and important, and should, if it is genuine, elicit the expression of strong viewpoints".¹

A commitment to establish a mechanism by which to enable this to happen, a Roundtable Forum of political parties and civil society, was made by both governments in the Joint Declaration in 2003. Moves to establish it have been slower than expected, with the timeframe set out by the Northern Ireland Office earlier this year having now slipped considerably. The Human Rights Consortium has always maintained the view that this Roundtable Forum does not need to be locked into progress on re-establishing the Assembly, but unfortunately there currently appears to be a danger of precisely that happening. This is one of the reasons it carried out an extensive advertising campaign this month urging the government and political parties to "Take the Bill by the Horns" and establish the Roundtable as a matter



of priority.

The Human Rights Consortium has contributed enormously to raising broader societal awareness of the potential of the Bill of Rights and of the ongoing process. Despite the tardiness of the overall process at times there is still a huge hunger among civic society to contribute to the shaping of the Bill of Rights. It is absolutely essential that the political parties now engage with civic society through the roundtable forum.

A Bill of Rights which is framed by human rights lawyers and politicians only will not command the respect and ownership it requires for it to function as the touchstone for fairness and decency for all of society. The Bill of Rights offers us the potential to feel more secure, as individuals, as communities and as a society – we must not squander that. The time is well nigh for the debate on the Bill of Rights to be moved on to the next step. So take the Bill by the horns!

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(Footnotes)

¹ Robinson, M.

'Making Rights Relationships An Everyday Practice' in Human Rights and Peace-Building in Northern Ireland – an international anthology. CAJ. January 2006.

Article 2 of the European Convention on Human Rights establishes protection for the “right to life.” This right includes a positive obligation on a State and by interpretation of the European Court of Human Rights requires that mechanisms exist to investigate the exercise of deadly force by state security forces. In order for an investigation to be compliant with Article 2, the European Court has held that it must be independent, effective, prompt and transparent, and adequately involve next-of-kin.

In response to the judgments of the European Court of Human Rights in relation to Article 2 cases from Northern Ireland, the UK frequently points to the Historical Enquiries Team (HET) and the Office of the Police Ombudsman (OPONI) as two mechanisms that implement its obligations in this regard. CAJ is in the process of producing an information pack for families on the work of these two institutions. This article will draw on this work and examine whether they meet State obligations Article 2.

The Historical Enquiries Team (HET)

The HET was created in 2005 by the Chief Constable of the Police Service of Northern Ireland (PSNI) to deal with unsolved murders relating to the conflict in Northern Ireland and occurring before 1998. The HET examines murders committed by members of the armed forces, the state, paramilitary groups and civilians where no principal perpetrators have been convicted. The HET is a policing initiative and is ultimately answerable to the Chief Constable of the PSNI.

Although the HET is a policing initiative, it has adopted a family-centred approach to its investigations. Throughout the course of a review, HET investigators will attempt to answer all questions posed by family members about their case. The HET must review all cases that fall within its remit. It will, however only engage with a family to the extent that the family wishes to be involved with HET. Overall, the two broad goals of an HET investigation are to address family questions and to complete unsolved police investigations.

The HET’s Special Cases Section (the Red Team) investigates deaths in which there are allegations of involvement on the part of police or security forces. This unit is made up entirely of police officers seconded from outside of Northern Ireland. The Red Team has its own



office, with staff working as a formal matter separate from other teams.

While the HET’s Red Team enjoys some independence from PSNI, it nevertheless fails to meet the European Court’s standard for an “independent” investigation. The Court has stressed that an investigation’s independence must be both *institutional* and *practical*.

For an investigation to have institutional independence, members of an organization cannot investigate other members of the same organisation nor can those responsible for an investigation be from the same organisation as those being investigated. Although the HET’s Red Team enjoys some practical independence from the PSNI, the head of the HET is answerable to the Chief Constable of the PSNI, who is ultimately responsible for HET investigations. HET investigations as a whole therefore are not institutionally independent.

In addition to issues of independence, it is also relevant to consider the HET’s general investigative and review procedures. At the start of its review of a case, HET will seek to get information on any outstanding questions that a family wants answered. The HET will then pursue answers to these questions regardless of whether the answers would provide evidential opportunities to a prosecutor. However, HET will also pursue any additional evidential leads that it uncovers throughout the course of its review of a case.

Throughout the course of a review, the HET will rely upon information from a variety of sources. These include: the UK’s intelligence sector, original case notes, original officers who investigated the case, families, nongovernmental organisations/representatives of families/solicitors, forensics and public documents.

UK government agencies are obliged to assist the HET if they have information that is relevant to a serious crime. A number of HET staff have security clearance and are thus able to view high-level intelligence information, including PSNI Special Branch/C3 files and all files of the British Army and Ministry of Defence.

UK government agencies can of course, if they determine that it is in the public interest to do so, rely on public interest immunity to withhold information from other UK government agencies and from the general public. UK government

Dealing with the role of HET

h the past - HET and OPONI

agencies could therefore fail to disclose information to HET investigators by invoking public interest immunity. It is always possible that this power would not be correctly invoked in every circumstance.

Overall, the HET has been endowed with significant investigatory powers that could meet the European Court's standard for an effective investigation. Nonetheless, the extent of these powers will largely be determined by how UK government agencies actually respond to HET requests. If UK government agencies properly balance public safety concerns with the public interest in completing investigations into murders of its citizens, then it is possible that the HET would be "effective" as defined by the European Court. If UK government agencies fail to properly balance these interests, then the HET would not be so "effective". At this time, because the HET is such a new organization, it is not possible to assess the HET's actual effectiveness in this regard.

HET review of a case will end when it has determined that it has pursued all possible investigatory leads and when it has responded, to the best of its ability, to family queries. It is not HET practice to submit a final report to families. If the HET uncovers evidence of criminal misconduct throughout the course of its review, then it will refer this information to the Public Prosecution Service. Furthermore, if the HET uncovers evidence of serious criminal misconduct on the part of police, then it is under a statutory duty to refer this information to OPONI.

The Office of the Police Ombudsman of Northern Ireland (OPONI)

OPONI considers incidents involving misconduct of police officers. This includes allegations of criminal behaviour, collusion, failure to properly investigate cases, and disciplinary matters.

OPONI's role and remit is to investigate complaints against the police, including police involvement in murders. If allegations against a police officer are "grave or exceptional" then the Police Ombudsman must investigate this officer. Allegations of police misconduct involving a death are always considered "grave or exceptional". Thus, the Police Ombudsman must investigate all cases where police are implicated in a death, regardless of when the death occurred. As with the HET, the OPONI must

investigate all of these cases, regardless of whether families support such an investigation.

The OPONI has recently created a Historical Investigations Team, also known as the Sapphire Team, to investigate historical cases of police involvement in a death. The Sapphire Team is made up entirely of police officers seconded from outside of Northern Ireland. Unlike the HET, the OPONI is not accountable to the Chief Constable of the PSNI. Thus, OPONI's Sapphire Team meets the European Court's requirement that an investigatory body maintain institutional independence from the body that it is investigating.

At this time, the day-to-day procedures of the Sapphire Team are still unknown. For example, does this unit have a separate office from the rest of OPONI staff? Does the work of the Sapphire Team remain confidential and off-limits to the rest of OPONI staff? Answers to these questions would provide some insight as to whether this team enjoys practical independence from the PSNI.

In addition to issues of independence, it is also relevant to consider OPONI's general investigative and review procedures. The PSNI is required to facilitate the interview of its officers by OPONI. In addition, the Police Ombudsman has a statutory right to all material and information held by PSNI. This includes access to national security material. OPONI is, however, limited by the fact that it is only able to investigate police officers. OPONI's inability to investigate army officers or civilians, including those involved with paramilitary organizations, means that OPONI is not compliant with the European Court's requirements for an "effective" investigation.

The European Court has stated that a combination of mechanisms can be used by a State to satisfy the requirements of an Article 2 investigation. This could lead one to ask whether a parallel investigation undertaken simultaneously by the HET and the OPONI would satisfy all the requirements of Article 2. After all, HET is weak with respect to the "independent" requirement, while OPONI is weak with respect to the "effective" requirement. It is unlikely, however, that parallel investigations undertaken by HET and OPONI would rectify each other's shortcomings and allow for an investigation that is compliant with Article 2. Furthermore, it remains to be seen whether the HET and the OPONI would actually undertake such parallel investigations. One thing, however, is certain: neither the HET nor the OPONI by themselves satisfy the requirements of an Article 2 investigation.

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