

## Update on the Office of the Police Ombudsman

An independent police complaints mechanism is an outworking of the basic principle that in a democratic society the police must not – in any circumstances – be above the law. Much has been said and written recently about the Police Ombudsman's Office and whether or not the Office is 'fit for purpose.' This discussion is the result of numerous concerns accumulated over the past five years which relate to the capacity of the Office to investigate historic cases. Recent reports into these cases have resulted in questioning the Office's political will and its capacity to conduct robust and impartial analysis. These concerns stem from the length of time required to conduct investigations, the quality of the reports published, and inconsistencies in what constitutes 'collusion' in the conclusions reached.

Three recent reports into the Office from three distinctly different institutions – CAJ, the Department of Justice, and Criminal Justice Inspection, have identified political interference in the Office. The Criminal Justice Inspection further determined that: the Police Ombudsman's Office should be suspended from conducting historic investigations due to a 'lowering of independence'; reports into historic cases were altered or rewritten to exclude criticism of the RUC with no explanation; senior officials in the Office requested to be disassociated from reports into historic matters after original findings were dramatically altered without reason; staff investigating some of the worst atrocities of the conflict believe police have acted as 'gatekeepers' to withhold key intelligence from them; and, major 'inconsistencies' exist in the Police Ombudsman's investigations of deaths which occurred in Loughinisland, McGurk's Bar and Claudy.

Significantly, CAJ maintains that this 'lowering of independence' can be traced back to the recruitment of the second Police Ombudsman Al Hutchinson, a process now mired in doubt due to substantial irregularities, which raises very serious questions for the Northern Ireland Office. The above findings constitute an equally grave matter for the PSNI whose policing 'house' is divided into two sides: one which manages community policing and 'ordinary' crime; and one composed of branches which deal with matters of national security and intelligence. It is this latter side of the house – specifically Crime Operations – which liaises with the Police Ombudsman's Office. Therefore the matter of police interference raises questions for both Chief Constable Matt Baggott as well as Assistant Chief Constable Drew Harris, who oversees Crime Operations. The investigation of historic cases engages legal obligations and therefore it is not an option to simply discontinue the investigation of such cases as some commentators have suggested. Where there is potential involvement of security forces in a death there are a number of obligations relevant to the investigation including the requirement it is independent from the security forces themselves. The UK periodically declares before the international community (in this instance the Committee of Ministers of the Council of Europe which monitors compliance with judgments of the European Court of Human Rights) that its mechanism for dealing with such cases is through the Office of the Police Ombudsman, hence the Office needs to be brought back to being compliant with the international human rights obligations of the state and discharge its functions within an acceptable rule of law framework.

It is CAJ's opinion that Al Hutchinson is no longer able to discharge his statutory function of holding the police to account and to carry out the necessary reforms to the Office. This will presumably include the recruitment of a new Chief Executive and Senior Director of Investigations following their resignations. In response to the reports Al Hutchinson has issued a post-dated resignation for June 2012, and is now indicating he would be willing to leave in January, meaning OFMdFM will need to promptly initiate the recruitment process for a new Police Ombudsman. CAJ will continue to monitor developments.

To read CAJ's report on the Police Ombudsman's Office visit the CAJ website at: [www.caj.org.uk](http://www.caj.org.uk)

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# Why human rights matter – the silenced struggle in Bahrain

**In September, Debbie, Kohner, CAJ Equality Programme Officer was refused entry to Bahrain. She provided the following account for Just News:**

“With a European passport, we almost expect to enter foreign countries with ease, but my refused entry to Bahrain was not due to strict immigration controls. The security service ejected me, and a French lawyer colleague, but no airline has any record of our journey. We were ejected due to our work as human rights defenders.

The very concept of human rights has been much debated and maligned of late, but the ongoing situation in Bahrain serves as a stark reminder of their importance. Human rights are international standards which provide an agreed minimum protection for all people, without distinction. When our own rights are generally well respected, the safeguards they offer us can easily be forgotten. When others’ rights are not respected, they often do not have a voice to explain their struggle.

In February 2011, tens of thousands of Bahraini citizens took to the streets in a peaceful demonstration for democracy. The state reacted forcefully, with reports of attacks on civilians, mass arrests, torture, deaths and the repression of any opposition to these acts. Over 1,500 people have been detained and over 40 people have died as a result. Just last week, it was reported that 16 year old Ali Ahmed Jaber Al Qattan died after being shot by security forces during an anti-government protest.

In March 2011, the King of Bahrain declared a state of national emergency. The state authorities, backed up by the Gulf Cooperation Council, used tear gas, rubber bullets, live ammunition and brute force to disperse crowds. The injured were brought to Salmaniya hospital, but the security forces used their injuries to identify the protestors. Reports show they locked down the hospital, prevented ambulances from reaching the injured and frustrated the treatment of patients already admitted. Some patients have since disappeared and others have reported being beaten by the security forces.

Following the crackdown, there have been mass arrests of those involved in the demonstrations or speaking out in their defence. In addition, websites have been closed down and journalists cannot report freely on the situation. Thousands of employees have been sacked. There has been a particular targeting of political opponents, human rights defenders, teachers and the medical staff at Salmaniya hospital who treated the injured. An independent commission has been mandated to report on the events, but the brutal crackdown continues despite its ongoing work.

Many of those arrested have been held incommunicado or in solitary confinement. They have had restricted access to lawyers and many have reported torture and other ill-treatment. One detainee, Abdulhadi Al-Khawaja, is a former director of the Bahrain Centre for Human Rights. He was arrested on 9 April 2011, after being severely beaten by masked policemen in front of a witness. Since his detention, he has reported torture and sexual abuse and required surgery for his injuries.

Trials have taken place before a military court, set up under the state of emergency. Although such a court should not be used to try civilians, 21 human rights defenders and 20 medical staff have been convicted of disparate offences; some have been sentenced to life in prison. The UN described the trials as ‘political persecution’. On the reading of his verdict, Abdulhadi Al Khawaja stated that he would ‘continue on the path of peaceful resistance’. In response, he was severely beaten by court officers, particularly to his face which was still recovering from his previous injuries.

In September 2011, hearings took place to challenge the sentences. The International Federation of Human Rights mandated me, as an independent observer, to monitor whether the principles of a fair trial were applied. We were also asked to meet the detainees. It is understood that their health is deteriorating and many are on hunger strike to protest against their arbitrary detention, unfair trials and the brutal crackdown against Bahraini citizens. I was not permitted to observe the trials or meet with the detainees and I am deeply concerned about their treatment.

As we watch events unfold in Libya, we must not forget the silenced struggle in Bahrain. Journalists cannot report freely on events and international observers, such as my French colleague and I, cannot enter the country. On being ejected from Bahrain, we received over 50 text messages from unknown Bahraini

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citizens, apologising for our treatment by their government and thanking us for our efforts to help their dire situation. I was humbled that they could offer so much support, when they are suffering such hardship and repression.

We are lucky that our basic human rights are generally respected, due in part to the ongoing scrutiny of the content and application of laws and policies in Northern Ireland. We have freedom of expression, freedom of assembly and the right to peaceful protest against the state. There is no widespread arbitrary detention or torture, and we are usually guaranteed the right to a fair trial. As we enjoy these fundamental freedoms, which we can often take for granted, it is important to remember those whose basic human rights are not respected.

The Bahraini authorities appear to be hiding the treatment of their citizens, through silencing them, journalists, and international observers. However, the voices of the Bahraini citizens cannot be fully silenced. If the international community takes note, the Bahraini authorities will be under more pressure to respect its citizens' human rights. Therefore, despite my refused entry to Bahrain, I will endeavour to hear the voices of its people's struggle."

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## Reproductive Rights, the CEDAW Committee and Northern Ireland

**A distinctive group of organisations has come together to submit a substantial report of evidence to the CEDAW Committee outlining the denial of reproductive rights and the lack of full access to reproductive health for women in Northern Ireland. The Report urges the Committee to give consideration to a fulsome examination of the UK's non-compliance with the CEDAW Convention. The organisations include the Family Planning Association (FPA), NIWEP (Northern Ireland Women's European Platform) and Alliance for Choice.**

The Report attests to the significant difficulties experienced by women in Northern Ireland who experience an unplanned or crisis pregnancy, and in an evidence based manner illustrates that the vast majority of such women do not have the same access to legal, safe and state provided abortion as to their counterparts in the UK as a whole. The Report notes that the CEDAW Committee has already expressed concerns to the UK government (1999 and 2008) on the dearth of provision for abortion in Northern Ireland, but that no action has been taken by government. The Report illustrates how, despite considerable action by civil society over many decades, test cases to the Court, and the recommendations of international human rights entities, the United Kingdom remains in breach of its international human rights treaty obligations under CEDAW. In particular, the organisations note that persistent inequalities and violations of the most essential rights to women result, dovetailing with violations of Articles, 2, 5, 10, 12, 14, and 16 of CEDAW. A close analysis of all these provisions is provided, drawing out the discriminatory aspects of the current legal situation, the lack of state response to discriminatory social and cultural patterns, and the impact on the relational rights to education and health for women. Attention is paid to particularly vulnerable and isolated women, resulting for example from their socio-economic status or their geographical location in Northern Ireland.

The Report emphasizes that despite the devolved legislative structure in Northern Ireland, the United Kingdom government has overall responsibility for ensuring that all of the UK's devolved legislatures meet the human rights obligations of the state. In its appeal to the United Kingdom's international obligations the Report makes some concrete recommendations. These include calling for the UK to repeal the 1861 Offences Against the Person Act and ensuring that it is replaced with legislation that is non-discriminatory and brings the right of access to abortion services in Northern Ireland in line with the United Kingdom. The Report emphasizes the need for information to women about their reproductive rights, as well as broad and deep consultation on access to reproductive health services in Northern Ireland.

The Report demonstrates the engagement of the women's sector with international human rights institutions and enforcement mechanisms, and will create an important point of dialogue between the human rights sector and women's activist and advocacy groups in Northern Ireland.

**Professor Fionnuala Ní Aoláin, Transitional Justice Institute**

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# CAJ gives Evidence to UN Committee on Eliminating Racism

In August 2011, CAJ gave evidence to the UN on racism in Northern Ireland, and underlined the need for various structural and administrative changes to help ensure equality for ethnic minorities in our society. The lobbying proved to be very successful, as each of CAJ's key points was included in the UN's recommendations for action to implement fully the International Convention on the Elimination of All Forms of Racial Discrimination ('ICERD') in the UK.

## Submitting Evidence to the UN

ICERD was adopted by the UN in 1965 and ratified by the UK in 1969. ICERD requires state parties to pursue all appropriate means to eliminate racial discrimination and ensure the equal enjoyment of human rights. In order to monitor the application of ICERD, its text provides for states parties to report periodically to a Committee on the Elimination of Racial Discrimination ('the Committee'), which is made up of national experts. The UK submitted a state report to the Committee in March 2010, and was called to give evidence before the Committee in August 2011. CAJ also submitted a 'shadow report' to the Committee on the extent to which racism is being eliminated in Northern Ireland.

In our submission, CAJ set out structural issues requiring attention such as the lack of: a Bill of Rights; Single Equality Bill; Irish Language Act; non-Christian education; safeguards in 'stop and search' powers and ethnic minorities in the criminal justice agencies' workforces. CAJ also raised: concerns regarding the independence and effectiveness of the Office of the Police Ombudsman for Northern Ireland; the need for the robust application of the public sector equality duty in section 75 Northern Ireland Act 1998 ('s75'); the need to address existing inequalities in any integration strategy; the need for diversity training and monitoring in the criminal justice agencies (in particular in relation to prisons), counter-terrorism measures, and the treatment of hate crime.

CAJ gave oral evidence to the Committee in Geneva in August 2011. We concentrated on five key issues, provided briefing notes and answered questions from the Committee in session. We also met with most of the individual Committee members to explain the context in Northern Ireland. As a result, all of our key issues were included in the Committee's Concluding Observations, which are a formal text of the Committee's recommendations for future action to implement ICERD.

## The Committee's Concluding Observations

CAJ's first key lobbying point was the need for a Single Equality Bill in Northern Ireland. Our non-discrimination and equality legislation is piecemeal and complex, which causes confusion for all, especially individuals who need to assert their rights and do not have access to legal aid. Our legislation is also inconsistent and incomplete. For example, it offers different levels of protection by reference to colour and nationality, as compared to race, ethnic and national origin. Despite over ten years; work on a Single Equality Bill, commitments in the 2006 St Andrew's Agreement and the passing of the Equality Act 2010 in Great Britain, no work is currently taking place to introduce harmonising legislation in Northern Ireland. The Committee was concerned to hear of the deficiencies in equality legislation in Northern Ireland and in its Concluding Observations it stated that the UK 'should take immediate steps to ensure that a single equality law and a Bill of Rights are adopted in Northern Ireland' (at para 19).

CAJ's second key issue was the lack of effective implementation of the s75 duty to have due regard to the need to promote equality of opportunity in policy development and implementation. We highlighted that s75 is often not applied at all, or only after the fact. Where applied, it is often used in a procedural, as opposed to substantive, manner which invariably finds 'no impacts' on any equality groups. Insufficient information is generally provided on existing inequalities and 'universal application' is believed to result in equality for all, despite underlying inequalities that could preclude access for some groups. In its oral evidence, CAJ underlined the particular importance of the s75 duty in the current economic climate, where spending cuts invariably impact disproportionately on disadvantaged groups, who have a higher uptake of public services. The Committee picked up on this argument and included in its Concluding Observations that the UK (including Northern Ireland) 'should ensure that any austerity measures do not exacerbate the problem of racial discrimination and inequality. Impact assessments are necessary before adopting such measures to ensure that they are not differentially targeted or discriminatory to those vulnerable to racial discrimination' (at para 13).



CAJ's third key lobbying point underlined the lack of safeguards in the 'stop and search' powers under sections 21 and 24 of the Justice and Security (NI) Act 2007 ('JSA'), which do not require individual 'reasonable suspicion'. Following the suspension of stop and search powers under s44 Terrorism Act 2000 ('s44'), due to their incompatibility with human rights, JSA is still in operation in Northern Ireland, even though it has even fewer safeguards against arbitrary and discriminatory use. Since the suspension of s44 the use of JSA has increased exponentially. Some individuals who have been stopped under JSA perceive the powers to be used as a 'tool of harassment'. However, the extent of any discriminatory use is not known, as data on those who are stopped is not published. In its Concluding Observations, the Committee urged that 'the impact of "stop and search" powers' be reviewed and recommended that 'all stops are properly recorded, whether or not leading to searches, and that a copy of the record is provided to the person concerned for all such incidents in order to safeguard the rights of those subject to these laws and to check possible abuse.' The Committee also requested the UK (including Northern Ireland) 'provide in its next periodic report detailed statistical data disaggregated by ethnicity and community origin on the use of stop and search powers and their effectiveness in crime prevention' (at para 18).

For its fourth key issue, CAJ underlined its concerns regarding the independence, effectiveness, efficiency and transparency of the Office of the Police Ombudsman. We highlighted the recent reports that have questioned the independence of the Office and explained that setting up an independent complaints mechanism by name does not always translate to its delivery in practice. In response, the Committee took note, in its Concluding Observations, 'of reports of the current lack of independence of the Police Ombudsman for Northern Ireland.' Furthermore, it stated the need to 'ensure that the Office of the Police Ombudsman in Northern Ireland is able to undertake effective, efficient and transparent investigations in cases of racial discrimination' (at para 15).

In its fifth key lobbying point, CAJ gave evidence on the lack of ethnic minority representation in Northern Ireland's criminal justice agencies. For example, less than 0.5% police officers come from an ethnic minority background. In our written evidence, we also outlined the low representation of ethnic minorities in the civil service, and our concern over the lack of alternative measures to address the low representation and retention of Catholic police officers. The Committee recommended, in its Concluding Observations, that the UK 'vigorously pursue its efforts to close the existing employment gap in the personnel administration of the criminal justice system and other sectors between ethnic minorities and the wider population' and 'also consider adopting such special measures to ensure that employment in the criminal justice administration reflects the diversity in the [UK's] society' (at para 22).

A further Northern Ireland specific matter raised by the Committee, which generated significant interest, was the confirmation by the Committee that sectarian discrimination is a form of racial discrimination under the provisions of ICERD. The Committee expressed concern at the lack of application of the ICERD framework to sectarianism in Northern Ireland. It recommended the UK examine and report back on the application of ICERD to the legislative and policy framework for tackling sectarianism, whilst cautioning that this should not take away from also reporting on the situation of vulnerable ethnic minority groups (at para 20).



## Conclusion

The UN has sent a strong message to the UK and Northern Ireland that the above structural and administrative failings must be addressed. CAJ will continue to lobby for the realisation of the Committee's recommendations. A full text of CAJ's submission to the Committee can be found at [www.caj.org.uk](http://www.caj.org.uk)

Debbie Kohner in Geneva

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## Taking a closer look at CAJ

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

### Deputy Director - Daniel Holder

*Daniel Holder is presently the Deputy Director of CAJ overseeing the organisation's four programme areas of criminal justice, equality, policing and protection of rights.*

Having long been an admirer, and indeed member, of CAJ it is a pleasure to now be working here. I am slotting into the solid foundation of expert-led programme work which has been well underway for a number of years and has a solid record of achievement. In recent months our equality programme has been influential in the outcome of the UK examination in Geneva under ICERD; our report on the Police Ombudsman's office has helped set the agenda for its future; in the criminal justice field CAJ's prisons report is being followed by research into the effectiveness of the PPS, and our protection of right programme is engaging in themes as diverse as training for grassroots human rights observers to preparing to input to the 2012 UN review of UK human rights commitments under the 'Universal Periodic Review'.

Moving forward one area of priority I see is to continue to counter the 'end of history' narrative which emerged following the devolution of justice powers in 2010. There is still plenty of 'unfinished business' from the human rights (including equality) elements of the Belfast/Good Friday Agreement that remain unimplemented as well as the constant threat that aspects of the settlement that were taken forward will be rolled back. To name but a few, in addition to a Bill of Rights, the Agreement guaranteed the incorporation of the ECHR here, the progressive 'removal of emergency powers', as well as providing for official parity for Britishness and Irishness. As our work on the Police Ombudsman's Office has shown there is also the delicate balance between protecting the existence of the human rights-defending institutions established further to the Agreement, whilst ensuring they never become 'neutralised' from their role of holding the state to account. Whilst implementing the human rights framework provided by the settlement is just one aspect of the external environment it appears to be one which is not going to end soon.

*Daniel started in September 2011 covering the career break taken by Aideen Gilmore. Daniel previously worked for the best part of five years in the policy team of the Northern Ireland Human Rights Commission; prior to this he ran a migrant rights project in South Tyrone under the joint auspices of NGO S.T.E.P and Dungannon Council; prior to this he worked as a trainer for health service interpreters and for the racial equality NGO the Multi-Cultural Resource Centre. Before that worked as a linguist in Cuba for the Central and Havana Universities and official press and TV agencies. He has an LLM in Human Rights Law from Queen's University Belfast.*

### Notice of AGM 2011

CAJ's Annual General Meeting will take place on Monday 7<sup>th</sup> November  
at 6:45pm in the CAJ Office  
(2<sup>nd</sup> Floor, Sturgen Building, 9-15 Queen Street, Belfast)

Keynote speaker will be Professor Michael O'Flaherty, Chief Commissioner,  
Northern Ireland Human Rights Commission

Coffee and tea will be served on arrival and refreshments will follow the meeting.

All members are welcome to attend.

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## Creative reflections on key human rights instruments

CAJ continues to creatively reflect on key human rights instruments. This month's contribution is by local poet, Medbh McGuckian and is based on the recent investigation into the events of Bloody Sunday.

### The Statement of my Right Honourable Friend

May in time, October over my head:  
Is the gaze that of the month itself?  
Refrains are often a matter of Autumn,  
I live too little, for what I could be living.

The me-ring that you buy yourself-  
I want to buy a blood-bright gown  
And let into its collar the satin  
You gave me as a hood

Which makes me think of you, day  
And night. The wind is wrapped  
In the longish grass, it shoots  
The constant arrow of its voice

So all the time you are looking,  
Looking, at a moon possessed  
By its planned dreaming. I cannot say  
How sooner or later, it must start,

It does start, in those parts of town  
That mock their own seediness.

## Civil Liberties Diary - August

### August 1

The Justice Minister, David Ford, today revealed that under new legislation, it is an offence for indecent or sectarian chanting to take place at major sports games in Northern Ireland.

### August 4

A report by the Criminal Justice Inspection has been critical of Community Restorative Justice Ireland (CRJI) for only referring one 'protocol' case to the police in the last three years. Under the protocol, schemes refer cases to the police if they know both parties, the offender and the victim, are prepared to cooperate with the police. The schemes received almost £1.4 million in funding from different sources including the Department of Justice.

### August 5

It is expected that MPs will debate the possible restoration of the death penalty. Local MP, Jeffrey Donaldson, has stated he believes that if someone is convicted of a paramilitary murder, they should face the death penalty.

### August 5

Judge Piers Grant has ruled in the High Court that news organisations must hand over any unseen footage of rioting in Belfast in July to the police. Judge Grant ruled that the previously unbroadcast and unedited material should be disclosed to assist the police in their enquiries. The legal battle taken by broadcasters sought to argue that if they were compelled to hand over such materials they could be seen as evidence gatherers for the police.

They further argued that it could heighten the risk to the safety of camera crews and reporters.

### August 10

Prisoners who are part of the ongoing 'dirty' protest at Maghaberry Prison are to be allowed visits from family members. The prison service has conceded to requests following the legal challenge by two inmates at the High Court. Prison authorities had denied protesting prisoners' access to visits on health and safety grounds.

### August 11

Six former internees from the early 1970s are suing the Ministry of Defence, the Secretary of State, the police, and the estate of the late Brian Faulkner, the former Northern Ireland prime minister. The action has been taken as a result of the discovery of government papers from the early years of the Troubles which legal representatives argue demonstrate the policy was discriminatory against the nationalist community.

### August 17

The prison service has decided to shelve plans to carry out routine drink and drugs tests on jail staff. The decision not to launch the initiative comes despite eight officers having been disciplined for drinking while on duty.

### August 23

Due to the introduction of new legislation, Additional Paternity Leave Regulations (Northern Ireland) 2010, fathers are now entitled to 26 weeks paternity leave. The legislation applies to fathers of children born on or after April 3 2011.

### August 31

The family of Sean Dalton have accused the Police Ombudsman of reneging on his promise to publish a report into the incident which occurred 23 years ago. The Dalton family said they were assured that they would be presented with the report today, August 31, which is also the 23<sup>rd</sup> anniversary of the killings. On Friday 26 August the family were told that there would be a further delay due to the imminent release of the Criminal Inspectorate Report on the Ombudsman's Office. A spokesman for the Ombudsman stated that "the case continues to be an extremely high priority for the Police Ombudsman and will be published as soon as practically possible."

*Compiled by John Keers from various newspapers*

**Just News** welcomes readers' news, views and comments.

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