

Nurturing the culture of impunity: the Justice and Security Bill and Northern Ireland

“The right to know and effectively challenge the opposing case has long been recognised by the common law as a fundamental feature of the judicial process” – so said Lord Kerr in a recent Supreme Court judgement. However, the Justice and Security Bill, now going through Parliament, would give government the power to decide that certain evidence in civil proceedings might cause “damage” or “harm” to the public interest and so must be given in secret. It would use the “Special Advocate” procedure which excludes non-state parties from the hearings or from any knowledge of the secret evidence given in these “Closed Material Proceedings” (CMPs). The Committee on the Administration of Justice (CAJ), Northern Ireland’s leading human rights NGO, is particularly concerned about the impact of this legislation in our region.

The Northern Ireland dimension to the legislation is important for three reasons. First, it is a breach of the common law principle of open justice, which is at least 300 years old and it is the experience of CAJ that “extraordinary” or “emergency” measures destroy confidence in the rule of law and encourage violence. Second, similar measures have been trialled in Northern Ireland and have led to miscarriages of justice. Third, their application here, would add to the cover of secrecy over the past and present actions of security and intelligence agents which threatens to undermine the peace process and nurtures a culture of impunity.

In our experience, measures which effectively bypass rule of law standards and establish a parallel “anti-terrorist” justice system lead to the kind of human rights abuses which fuelled the conflict in Northern Ireland and led to the marginalisation of “suspect communities.”

“Special Advocates” can already be used in “special tribunals” in Northern Ireland where the Secretary of State presents secret evidence to justify blocking of a discrimination claim on the grounds of “national security.” Similar secrecy is used when Parole Commissioners are asked to rule on the revocation of licence of prisoners released under the Belfast/Good Friday Agreement, based on “intelligence” information. Marian Price, a physically and mentally unwell woman who is unlikely to be a serious threat to national security, is currently detained after such a secret hearing.

This legislation could weaken the continuing peace process in Northern Ireland. One of the gaps in that process is the lack of a comprehensive method of dealing with the legacy of the past, especially in terms of unsolved murders and other crimes. Instead, there is a patchwork of measures, including some public Inquiries, the Historical Enquiries Team, ongoing investigations by the Police Service of Northern Ireland, investigations by the Police Ombudsman and inquests. Thankfully, the secret justice proposals do not relate to inquests – the government evidently having had second thoughts since the original Green Paper. However, beyond inquests there is still a range of civil proceedings in Northern Ireland dealing with the legacy of the conflict which would be affected by the introduction of CMPs, including any future judicial reviews of investigations into conflict-related deaths, challenges relating to disclosure during inquests, decisions not to prosecute and civil actions for damages relating to miscarriages of justice, ill-treatment, unlawful killings, failing to take reasonable steps to protect life and so on.

In effect, this legislation would close off all the other legal avenues that victims and relatives of the deceased are trying to use to get at the truth.

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Many of these cases revolve around the actions of state agents, whether uniformed policemen or soldiers or the shadow army of agents and informants that a range of secret agencies recruited and deployed during the 30 year secret war in Northern Ireland. CAJ is worried that there is a pattern emerging of covering up these activities and refusing to properly investigate cases where state agents may have been involved in unlawful killings. This pattern includes the refusal of an Inquiry into the murder of human rights lawyer, Pat Finucane – the most prominent and serious collusion case admitted by the UK Prime Minister, the subversion of the Police Ombudsman's Office (see the recent CAJ report <http://www.caj.org.uk/contents/962>), weakening of the already limited independence of the Historical Enquiries Team (HET), the rehiring of retired RUC officers, including ex-Special Branch personnel in sensitive and influential roles both within the HET and the PSNI itself and an unwillingness to disclose information to the "new" inquests which are designed to be compliant with Article 2 of the European Convention on Human Rights (Right to Life).

As a human rights organisation committed to the rule of law, CAJ has very good reasons for focussing on state abuses. In terms of the hurt and loss caused to victims of atrocities the identity of the perpetrator does not matter – the pain and grief is the same. However, in terms of the damage to the rule of law, it matters very much indeed. We entrust the task of protecting all citizens and upholding the rule of law to the state and to that end we give state agents the legal monopoly of the use of force. If those very state agents abuse that trust by committing crimes and breaching human rights standards they undermine public confidence in the rule of law and in all state institutions. If we cannot trust those who are meant to protect us, who can we trust? Furthermore, if the government that heads the state refuses to properly investigate alleged abuses and brings in measures designed to cover up the activities of secret state agencies we are looking at a real crisis of legitimacy and a potentially catastrophic accountability gap.

Abuses by UK security services and forces and the willingness to shield their perpetrators from justice did not begin in Northern Ireland, as the recent admission of torture in Kenya and the six decade long cover-up demonstrates. There can be little doubt, however, that the experience of waging a 30 year long "dirty war" within the borders of the UK has deeply corrupted the British security establishment. It is arguable that its long experience in Northern Ireland has normalised human rights abuses in the pursuit of "counter-terrorism." It used torture, detention without trial, widespread and routine violence against the civilian population, disproportionate force in response to public order situations and, in the cases where this legislation would be used, extra-judicial executions and the encouragement and protection of "counter-gangs" of sectarian murderers.

Today, the "dirty war" is not confined to Northern Ireland but has a global theatre of operations. However, the same lid of secrecy is being constructed beneath which the culture of impunity for the security establishment corrupts and rots the very fabric of democracy and the rule of law.

A shorter version of this article appeared in the Guardian on 28 August 2012

The PJ McGrory Human Rights Lecture 2012

The PJ McGrory Human Rights Lecture has become an integral part of Féile an Phobail, held each summer in Belfast. A range of eminent speakers have given the lecture in the past and this year was no different. The large assembly room of Saint Mary's University College was filled to capacity, as people listened to an address by Doreen Lawrence, mother of murdered teenager, Stephen Lawrence.

The case of Stephen Lawrence is one that is well known and that resonates with human rights campaigners and supporters worldwide. Stephen was just 18 years old when he was murdered in a racist attack at a bus stop in Eltham, South East London. For almost 19 years, Doreen Lawrence has fought for justice for her son against some of the most powerful institutions in Britain - the police, the Prosecution Service, the criminal justice system and the government, during which she exposed institutional racism and brought about wide ranging legal and social changes. The report of the Macpherson Inquiry, ordered by Jack Straw after the murder, concluded that the Metropolitan Police was 'institutionally racist' and made 70 recommendations for change, calling for reform of key institutions across Britain. Crucially, the Report also advised the abolishment of the double jeopardy rule, which proved pivotal in securing prosecutions for Stephen's murder.

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On 3rd January 2012, two men were convicted for the racist murder of Stephen. Ms Lawrence opened her lecture by admitting that to speak about Stephen's death was too painful, and that her address would concentrate on the Stephen Lawrence Trust. In memory of her son, and to ensure a positive lasting legacy for him, Doreen and her husband established the Trust to combat social injustice by promoting equality of opportunity, good race relations and the elimination of racial discrimination. Ms Lawrence focused her lecture on the importance of the work of the Trust which offers education and training to underprivileged children and young adults, providing bursaries for architecture courses initially (Stephen had ambitions of becoming an architect), with other disciplines to follow in the near future, including law and media amongst others.

The aim of the Trust is to ensure that future generations of young people would enjoy the opportunities that were denied to Stephen by his senseless murder. To date, more than a hundred aspiring architects from the UK, Caribbean and South Africa have received financial assistance and mentoring during their studies. Ten of those students have gone on to become fully-qualified, with many more well on their way.

Hers has been a long tireless struggle, fraught with obstacles and opposition. In the question and answer session following her address, Ms Lawrence offered hope to other families who find themselves challenging the criminal justice/policing structures and practices, speaking about the attitudinal problems she encountered with the law enforcement agencies involved in investigating her son's murder. She encouraged those who find themselves in a similar situation to speak up and to stand up for what they believe in; that those in power do not understand the pain of those who are suffering and that the only way to evoke change is to do something about it and to persevere. Ms Lawrence warned that institutional racism still exists today despite the best efforts of some, and questioned when we will see a time when such racism is a thing of the past.

In relation to the prosecution of her son's murderers, Ms Lawrence reflected that she is hopeful of further prosecutions. When discussing the claims of some that further investigation of the case would be too costly, she simply insists that had the police done the job properly in the first place, they would not find themselves in the situation they are in today.

For further information, visit www.stephenlawrence.org.uk



Doreen Lawrence pictured at the West Against Racism Network's new anti racism wall mural (drawn by Ian Knox), along with muralists Danny Devenney and Marty Lyons

On the Frontlines: Gender, War, and Post-Conflict Process

This should be an essential text, not only for academics working in the area of transitional justice, but also for activists, practitioners and all those working to bring about change in post-conflict societies. The analysis and the richness of the examples it contains add strength to the arguments being put forward by feminists in the challenging aftermath of the Arab Spring, which promised so much and as yet has delivered so little for women. For the women's sector in Northern Ireland, the book cries out to be read through the lens of our own peace process and its incomplete equality agenda.

As the authors state in their introduction, 'a gender-centred lens of analysis, followed by practice, enforcement and oversight, has the possibility for transformative effect on women's lives in post-conflict societies.' They describe the text as 'a primer on the role of gender – focusing on women - in the post-conflict process, beginning with what happens to women during war before examining the issues involved in post-conflict reconstruction.' They challenge the assumption that conflict endings are the same for women as for men, as they also contest the idea that the end of conflict 'constitutes the end of violence, confrontation, vulnerability, or related manifestations of war for women.' The formal end of hostilities between generally male combatants often has little effect on the quality of life for women. Their description of 'closed private masculine spaces that pervade the endings of violence' (including our Downing Street Declaration) and serve to articulate principles and set the tone for future negotiations is convincing.

Several key themes provide a conceptual anchor throughout the book. These include: (1) the notion of gender centrality as a more effective and compelling alternative to gender mainstreaming; (2) the relevant international norms and the extent to which they have been successful in addressing the gendered aspects of post-conflict processes; (3) the importance of consulting with local populations, and with women in particular, before advancing any post-conflict agenda; and (4) the inadequacy of focusing disproportionately on civil and political rights, whether through accountability mechanisms, rule of law initiatives, or other avenues, to the exclusion of socio-economic rights and needs. The insistence on 'gender centrality' is an important counter to the use of gender mainstreaming, which so easily slips into gender neutrality and marginalization of women.

A rich number of sources provide evidence illustrating how women bear a disproportionate cost of conflict, without the authors falling into the trap of essentialising women as victims. What they demonstrate is that even when women have been perpetrators, they end up overlooked by the measures introduced to resettle former combatants. DDR, too often based on a masculine construct of perpetrator, ignores women's specific needs and often reinforces patriarchal control within communities emerging from conflict. With reform of security, women 'by virtue of their historic absence from military, police, and paramilitary forces, are rarely involved in or have the capacity to be central in these conversations.'

The discussion on a feminist truth process – one that would be able to 'address the broader social, legal, and cultural inequalities that prevail pre-, during, and post-conflict for women'- is highly relevant, as is their uncompromising insistence that 'reproductive rights are a measure of the extent to which a constitution values women's agency'. By that standard, reproductive justice has to be an integral part of our post-conflict process. If not, as the authors state so powerfully, 'the female body remains the ultimate site of social and political control.'

Throughout the book the authors consider UN Security Council Resolution 1325 on 'Women, Peace and Security' and the extent to which it has enabled better outcomes for women. For those of us arguing for the implementation of UNSCR1325 within Northern Ireland (as mandated in the concluding observations of the 2008 CEDAW periodic review of the UK government), the authors' critique of the resolution provides useful information for a more robust application of its measures. One important area that could have been given greater consideration is that of election quotas. The treatment of this contentious issue is cursory and more discussion of why quotas are critical to improving women's representation - despite their misuse when women are controlled by rigidly patriarchal parties – would have been welcome.

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The notes are excellent, but a bibliography would have been a useful addition. Overall the authors have succeeded in producing a book that combines scholarship of the highest order with a feminist commitment to demonstrating how legal and political processes could work to transform the lives of women in countries experiencing devastating political conflict.

Reviewed by Margaret Ward, Women's Resource and Development Agency.

On the Frontlines: Gender, War, and Post-Conflict Process by Fionnuala Ní Aoláin, Dina Francesca Haynes, and Naomi Cahn, Oxford University Press, 2011, 358 pp.

Domestic Violence: A Human Rights Issue

On 16 May 2012, the Health and Education Ministers for Northern Ireland launched the Women's Aid Federation Children and Young People's Strategy entitled 'Our Place – Safe Space'. This strategy has the aim of addressing the issue of domestic and sexual violence perpetrated against young people, and is one of an increasing number of recent efforts to tackle the problem of domestic violence in Northern Ireland. Historically relatively little attention was given to the issue of domestic violence in this jurisdiction. However, in recent years there has been a much greater focus on tackling this issue, with one of the key policy document being the Northern Ireland Office's 'Tackling Violence at Home' strategy of 2005.

The growing efforts being made in Northern Ireland to address domestic violence are echoed in the increasing concern at the international level regarding this issue. For many years domestic violence was not viewed as falling within the ambit of human rights law. Despite the fact that violence against women in the home constitutes a very clear breach of several of the rights contained in the European Convention on Human Rights, this issue did not receive substantive consideration by the European Court of Human Rights until 2007. Nevertheless, in a series of recent cases involving domestic violence, including *Kontrova v Slovakia* (app. no. 7510/04, 24 Sept 2007); *Bevacqua and S v Bulgaria* (app. no. 71127/01, 12 Sept 2008); *Opuz v Turkey* (app. no. 33401/02, 9 Sept 2009); *E.S. and Others v Slovakia* (app. no. 8227/04, 15 Dec 2009); *A v Croatia* (app. no. 55164/08, 14 Oct 2010); and *Hajduova v Slovakia* (app. no. 2660/03, 30 Nov 2010) the Court established that domestic violence can breach the right to life, as found in article 2; the right to be free from torture and from inhuman or degrading treatment, as contained in article 3; the right to private and family life, as found in article 8; and the article 14 equality provision.

Indeed the efforts made within the Council of Europe system to address domestic violence are not limited to the endeavours of the European Court of Human Rights. On 8 June 2012 the United Kingdom became the twentieth state to sign the Council of Europe's new Convention on Preventing and Combating Violence against Women and Domestic Violence. The definitional approach adopted by this new Convention to the issue of domestic violence is particularly striking, in that the terminology used in the Convention repeatedly separates out domestic violence from violence against women more generally. It could be argued that by so doing the Convention risks implying that domestic violence is unrelated to the structural issues of violence against women. Nevertheless, such an approach does possess certain advantages. In particular, it serves to emphasise the importance which the Convention accords to combating the specific problem of domestic violence, an aim which is certainly to be commended. The Convention contains lengthy and detailed provisions regarding the obligations to be placed on states parties in relation to the issue of domestic violence. These include provisions relating to criminal justice responses; awareness raising within society; and, crucially, the provision of social support measures to victims. Although twenty states have now signed the Convention, only one state has as yet ratified this instrument. Ten ratifications are needed for the Convention to enter into force and it is to be hoped that this quota will be achieved in the near future.

It is certainly true that increasing efforts are being made to address the problem of domestic violence in Northern Ireland. However, framing the issue in the language of rights is a method of approaching the problem of domestic violence which is currently somewhat under-developed. Were the new Council of Europe Convention to come into force and be ratified by the UK, the adoption of further measures to address this issue may well result, given the detailed nature of the obligations contained therein. In addition, the Convention serves to emphasise that domestic violence undoubtedly falls within the ambit of human rights law, and it seems that this fact should be reflected more frequently in the debate surrounding this issue.

Dr. Ronagh McQuigg, School of Law, Queen's University Belfast

Roma Holocaust / Pharrajimos Memorial Day, 2nd August

This day was marked in August 2012 by Pavee Point Travellers' Centre along with Roma activists and organisations throughout Europe.

The Nazi genocide of Roma and Sinti, during the Holocaust, is known as the Pharrajimos, which translates to "the devouring". Pharrajimos memorial day takes place on 2 August and it marks the day in 1944 when almost 3,000 Roma were exterminated in the gas chambers of Auschwitz-Birkenau. This day was first marked in 2009 at the suggestion of the European Roma and Travellers Forum, in response to the lack of recognition and commemoration of Roma suffering during the Holocaust. Since then, one minute silence is observed at the Holocaust memorial stone in front of the Palais de l'Europe, Council of Europe in Strasbourg, and by Roma throughout Europe.

This day was recently marked in Pavee Point in an event that was widely attended by Roma, Travellers, representatives of the Irish Jewish community, the Holocaust Education Trust Initiative, elected representatives and those working in community and statutory organisations. The event was addressed by Roma speakers, followed by a minutes silence and the Roma national anthem, "Gelem Gelem". This event was particularly poignant as there were Roma in attendance who have family members who were persecuted during the Holocaust.

An estimated 11 million people were murdered in the Holocaust during the Second World War because of their nationality, ethnicity, sexuality, disability, religious belief, political affiliation or because they were prisoners of war. The largest single group of people to be murdered during the Holocaust were 6 million Jews. It is estimated that between 400,000 and 500,000 Roma and Sinti died during the Holocaust. At least another half million were displaced and dispossessed, their identity papers lost or destroyed.

However, during the Nuremberg Trials, no mention was made of this genocide of Roma and Sinti and no assistance or compensation was given to Roma who had survived the concentration camps. As the former Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg notes in his 2012 report on the human rights of Travellers and Roma, 'For the survivors, no justice came with the post-Hitler era... The genocide of the Roma was hardly recognised in public discourse.' The marginalisation and racism that Roma face and subsequent lack of power within mainstream institutions was evident in their exclusion from measures of transitional justice.

In 2003 the Jewish community in Prague hosted the first ever conference on the genocide of the Roma during the Second World War. Since 2009, the genocide of the Roma during the Holocaust has been formally commemorated. However, Roma rights activists continue to struggle for recognition and remembrance of the genocide of Roma and Sinti. For example, at the former concentration camp of Lety stands a pig farm. Back in 2005, the Czech Republic was singled out in a European Parliament resolution for failing to remove the pig farm at the site and create "a graceful memorial" to honour victims of the Romani Holocaust. But each government has either called for the issue to be studied further or said there was a lack of funds to do so.

Learning lessons from the past?

What is also notable about Pharrajimos memorial day is that it is intended to be an event to commemorate those who have suffered in the past, but also to stand in solidarity with Roma and Travellers experiencing racism and discrimination today. In the wake of the Holocaust a comprehensive human rights framework was developed with a view to creating societies that respect, protect and fulfil human rights. However, since then Roma have faced forced evictions, forced sterilisation, segregated education, vigilante attacks and widespread racism. Most recently France has been urged by the UN to comply with international non-discrimination standards and human rights law in response to evictions and collective expulsions that have taken place over the summer.

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In a report released this year, the former Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, noted a number of worrying trends, including racist speeches by elected officials, the development of right wing extremist groups, rising activity on the internet and an increase in serious cases and attacks against Roma. For example, in January 2012, in the Czech Republic a Roma woman was brutally murdered, beaten, kicked and stabbed to death. According to local residents, the attackers are known for giving Nazi salutes in the streets.

The level of racism that Roma face throughout Europe indicates that Pharrajimos day is increasingly important, as much for the acknowledgement and commemoration of the past, as for highlighting racism of today.

To see Thomas Hammarbergs report on Traveller and Roma Human Rights go to <http://www.humanrightseurope.org/2012/02/hammarberg-publishes-47-country-report-on-roma-and-travellers/>

Siobhán Curran



Romani woman (prisoner no. Z-63598), imprisoned October 1, 1943.
The letter 'Z' stands for 'Zigeuner' or Gypsy. [Auschwitz Memorial Archives.]

Staffing changes at CAJ

CAJ is an independent organisation and, as a matter of principle, neither requests nor receives any government funding. We are therefore totally reliant on the generosity of individuals and foundations. Over the years we have been supported by organisations such as the Joseph Rowntree Charitable Trust, the Barrow Cadbury Trust, the Esmee Fairbairn Foundation, the Oak Foundation and others too numerous to name. For the past decade we have also benefitted enormously from the support of Atlantic Philanthropies. In 2008 a generous grant from this source, together with other funding, allowed us to expand to ten members of staff – more than double the average for the previous ten years. The three year portion of this grant expired last year and, in the current difficult funding climate, we were unable to maintain all the posts it funded. In June of this year, therefore, we had to reduce our complement by two full-time equivalents which involved the loss by voluntary redundancy of our valued Policing Officer, Dr Mick Beyers and a reduction in hours for our other programme officers.

The good news is that our financing for the intermediate future is stable and we are working with existing funders and others to ensure the long term sustainability of the organisation.

Civil Liberties Diary - Summer 2012

June 1

Retired Judge Sir Anthony Hart is to chair Northern Ireland's official inquiry into the abuse of children living in residential care back to 1945. The Inquiry will begin its work in the autumn and will report in approximately 3 years time.

June 21

Bertha McDougall, Victims Commissioner announced that 25 people have been selected to sit on the new Victims and Survivors Forum. These include victims of republican violence, plus those bereaved by security forces and loyalists. The new group will promote the interests of victims and advise government on the services being provided for victims and survivors.

June 26

The inquest into the first killing of a child by a rubber bullet is to be reopened. Francis Rowntree was killed in 1972. A Historical Enquiries Team report into the shooting confirmed that she was an "innocent bystander who posed no threat whatsoever to the soldier", and John Larkin QC, has advised that a fresh inquest be held in the death.

June 28

A report into the death in custody of a vulnerable prisoner with serious mental health issues has discovered that despite being a suicide risk, Aaron Hogg, 21, was allowed a month's worth of pills in his cell. Prisoner Ombudsman Pauline McCabe said the investigation highlighted, "yet again, the importance of effectively addressing the misuse of drugs within Northern Ireland prisons."

July 3

Belfast City Council voted to support marriage equality for same sex couples. The motion was proposed by Sinn Fein councillor Mary Ellen Campbell who called for the council to "commit to supporting the right to marry for all consenting, loving couples".

July 6

A murder investigation is to be launched into the deaths of 13 people more than 40 years after they were killed on Bloody Sunday in Derry.

July 17

The new Police Ombudsman Dr. Michael Maguire pledged operational independence in a bid to restore community backing. He said "The police complaints system must be wholly independent if it is to have the confidence of the public and the police."

July 20

Members of the House of Lords have called for responsibility on parades to be devolved to Stormont. Former Assembly Speaker Lord Alderdice said the recent row over the independent Parades Commission would continue until the power was handed over to locally-elected politicians

July 23

It was reported that NI Police Service have paid out more than £51 million in compensation in the past 5 years. Among the claims settled with members of the public have been allegations of assault, false imprisonment, damage to property and injuries caused by officers.

August 9

The inquest into the killing of 11 unarmed civilians by the Parachute Regiment on 9th August 1971 in the Ballymurphy Massacre is to be reopened by order from Attorney General John Larkin. The Historical Enquiries Team is also carrying out a probe.

August 23

PSNI and children's charity Barnardo's have launched a joint initiative to tackle child sexual exploitation in south and east Belfast. According to PSNI figures over half of all victims of sexual offences in Northern Ireland last year were under 18.

August 30

The Northern Ireland Prison Service are to begin trialling of new technology for searching prisoners without human contact. This will begin at Magilligan Prison and Hydebank Wood Young Offenders' Centre within weeks.

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Just News

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