Just News

CAJ
Committee on the Administration of Justice
Promoting Justice / Protecting Rights

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Regulating agents and informants – an issue Europe wide

The use of paramilitary informants outside of the law is one of the practices and patterns of human rights violations associated with the Northern Ireland conflict. It is an area of covert policing which CAJ has long addressed, an important area of policing reform as part of the peace process, and remains the central focus of official resistance to effective investigation of the legacy of the past.

Whilst the NI conflict may provide one fairly extreme example of the use of informant handling the subject matter is by no means a localised issue. Rather, the manner in which agents are used has been a matter of public concern across a number of European states. This relates to both when informants and undercover officers are used to infiltrate groups, and, if so, the extent to which informants are authorised or otherwise permitted to be involved in criminal offences and given a degree of immunity from prosecution.

The use of agents *per se,* requires justification in relation to ECHR Article 8 rights to private and family life (and other rights such as free association under Article 11) - use can only be justified for purposes such as crime prevention – meaning there is no justification for simply infiltrating lawful protest groups. In relation to the infiltration of, for example, far right or paramilitary groups that do operate outside of the law the questions turn to authorised or permitted conduct of informants and undercover officers, and the participation in activities which would constitute, as agents of the state, human rights violations. There have been particular scandals in Europe regarding the infiltration of far right groups in a manner which has either failed to curtail unlawful activities or has even facilitated actions. There has also been the issue of police spying on entirely lawful protest groups, not least the actions of the Metropolitan Police Special Demonstration Squad that are now subject to some scrutiny by the UK Undercover Policing Inquiry (Pickford).

A number of these issues were explored at a recent seminar at the European Parliament, in which CAJ participated, organised by the GUE/NGL grouping at the Parliament and hosted by Lynn Boylan MEP. CAJ's input focused on the lessons from the NI process, and the need for codified standards in relation to agent handling across the EU and beyond. Also presenting, the NGO Statewatch set out an 'alphabet soup' of acronyms for the many EU wide policing cooperation networks that are now focusing on cooperation in this area of policing, in the absence of codified overarching standards. Other speakers focused on the issue of the Pickford Inquiry, and included inputs by two key witnesses in the inquiry Kate Wilson and Jason Kirkpatrick both activists targeted by undercover policing.

Lawyers Darragh Macken of KRW Law and Britta Eder, and researcher Eveline Lubber, also spoke in relation to the Pickford inquiry – whose terms of reference restrict the inquiry's focus to England and Wales, and not elsewhere where officers were operating, including Ireland north and south and Germany. There was a general sense that the cooperation of states on covert policing matters must be mirrored by civil society seeking regulation to ensure human rights compliance.

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Campaigning against sectarianism

The history of this region and the experience of a 30 year violent political conflict have left a society marked by a basic ethnic division and characterised by widespread sectarianism. This is an ideology and a set of prejudices that has killed thousands and crippled our society. Unfortunately, sectarianism is sometimes downplayed, seen as an outworking of traditional "culture," tolerated and normalised. This is in spite of a murderous history of violence committed for sectarian motives, contemporary segregation enforced by sectarian intimidation and evidence of "intersectionality" with other forms of prejudice.

This is why CAJ and others have for long argued that sectarianism is simply another, local form of racism. One implication of this approach is that sectarianism falls within international standards calling for the eradication of racism and the sanctioning of behaviour and expression inciting violence and discrimination. The position that sectarianism is a form of racism has been promoted by the Northern Ireland Human Rights Commission and accepted by a number of international bodies. The UN Committee on the Eradication of Racial Discrimination (CERD) said:

> Sectarian discrimination in Northern Ireland and physical attacks against religious minorities and their places of worship attract the provisions of ICERD in the context of "intersectionality" between religion and racial discrimination. (Report on the UK 2011)

Later in 2011 the Council of Europe Advisory Committee on the Framework Convention for National Minorities directly addressed the exceptionalist (sectarianism is a distinct phenomenon) approach:

[T]he Advisory Committee finds the approach in the Cohesion, Sharing and Integration Strategy [the then community relations programme] to treat sectarianism as a distinct issue rather than as a form of racism problematic, as it allows sectarianism to fall outside the scope of accepted anti-discrimination and human rights protection standards. Similarly, the CSI Strategy has developed the concept of "good relations" apparently to substitute the concept of intercultural dialogue and integration of society. (Council of Europe 2011: 25)

It is CAJ's view, the exceptionalist view, that seems to regard sectarianism as "a little local difficulty" needs to be decisively refuted through sectarianism being defined in law. In 2014, the Equality Coalition, which CAJ co-convenes with UNISON, published a booklet on this theme which makes the case for a legal definition: Sectarianism in NI: Towards a Definition in Law by Dr Robbie McVeigh. (http://www.equalitycoalition.net/?page_id=38)

Sectarianism also needs to be sanctioned by law – in extreme cases by the criminal law. On 13th October this year the Equality Coalition, together with the Mitchell Institute at Queen's University will be holding a conference (see over) to look at these issues and how they intersect with the right to freedom of expression. This is part of what we believe must be a broad campaign designed to erase sectarianism from Northern Ireland society.

As a form of racism, sectarianism must be combated as effectively as possible. In terms of our own history, a lasting peace, with minimal chance of a reversion to violence, requires social reconciliation and better relations between people, especially the two main ethnic blocs. It is self-evident that reconciliation requires equality between the two main communities and the minimisation, if not eradication, of sectarianism.

The development of a rights based society which all can support depends on the universality of human rights and the fact that inherent dignity of the human is their foundation which in turn means that equality is at their heart. Any breach of the equality principle undermines the moral or normative basis of all human rights.

Discrimination is an assault on human dignity and sense of belonging and self-worth; but it is also a breach of the very universality which is the basic characteristic of "human" rights.

Similarly, human rights are the antithesis, the polar opposite of any form of racism or other prejudice. Repressive laws and practices, institutionalised discrimination, limitations on basic freedoms, arbitrary detention, torture and extra-judicial killings are all gross violations of human rights but in some senses they are simply symptoms.

Behind these abuses is a willingness to offend against the dignity of the human, almost always on the basis of some form of prejudice. The underlying racism or prejudice is the basic enemy. The intersectionality of prejudice is demonstrated in Northern Ireland by unusually high levels of misogyny, homophobia, racism and xenophobia and other prejudice and it is therefore clear that combating sectarianism requires a broad campaign against prejudice of all kinds. In this sense, the general push for equality in all fields can be seen as an essential part of the campaign against sectarianism. It is right to focus on and fight against every particular form of prejudice and discrimination, but in the end each battle makes its own contribution to a comprehensive campaign for equality.

In conclusion, sectarianism as our local form of racism cannot be tolerated any more than any other type of this vile prejudice. Campaigning against it should involve legal sanctions but also the intensification of the push for equality in all walks of life and the countering of prejudice and discrimination of all kinds. This is a fundamental underpinning of the struggle to protect and promote human rights in general as they rest on the concept of the dignity of the human.

Defining public duties to tackle incitement to hatred whilst respecting free expression: Reviewing the legal & policy framework

Friday 13th October 2017
Canada Room, Queens University Belfast

A conference hosted by the Equality Coalition in partnership with the George J. Mitchell Institute for Global Peace, Security and Justice at QUB, to address the 'threshold' and 'intervention' questions increasingly defined in human rights law as to when public authorities can or must act against speech and cultural expression in order to protect the rights of others.There will be a morning panel discussing the topic of 'harms and impacts of hate expression', with representatives from the Equality Coalition and others. There will then be a number of presentations by International experts on Case Law of the ECHR, 'combating hate speech' and 'incitement to hatred and the risk of political censorship.'

There will also be a presentation of the expert research paper commissioned by the Equality Coalition by Dr Robbie McVeigh - 'Incitement to Hatred in Northern Ireland.'

There will two further panels responding to the mornings discussions and presentations from politicians and then public authorities. In the afternoon there will be 4 workshops:

1. A Fresh Start for Parades, Flags, Identity, Culture and Tradition – factoring in countering hate expression and the rights of others?
2. Countering Incitement to hatred on grounds of gender: a missing category
3. Free religious expression and countering homophobia, drawing the line
4. Public authorities duties to tackle discriminatory expression

Please RSVP to events@caj.org.uk

Equality Coalition
UNISON the public service union
CAJ Committee on the Administration of Justice Promoting Justice / Protecting Rights
Queen's University Belfast

The next two articles deal with a common subject – the accountability (or lack of it) of British soldiers for crimes that they may have committed in the past. The first, dealing with Northern Ireland, concerns cases dating back 40 years or more, the second, dealing with Iraq concerns issues arising in the last decade or so. Just News has frequently reported on dealing with the past here; we now welcome the article on Iraq from Thomas Hansen, a lecturer in law from the Transitional Justice Institute at Ulster University.

Accountability for crimes allegedly committed by soldiers in Northern Ireland

One of the international human rights accountability mechanisms is the periodic examination of countries' adherence to the most important provisions of the International Covenant on Civil and Political Rights by the United Nations Human Rights Committee. The 7th Periodic Report on the UK in 2015 included a section on "accountability for conflict-related violations in Northern Ireland" which was given special prominence and was subject to the Committee's "follow-up procedure." The Committee recommended the swift implementation of the Stormont House Agreement and other relevant measures. As we know, little or no progress has been made. In June of this year, CAJ made a detailed submission to the Committee, part of which focused on the attacks by sections of the media and government on defence lawyers and law officers alleging bias over the decision to prosecute three ex-British Army soldiers.

This article is drawn from this submission, the full text of which, including references, can be found here: https://caj.org.uk/2017/06/30/s465-united-nations-human-rights-committee-response-concluding-observations-7th-periodic-report-uk-international-covenant-civil-political-rights-iccpr/. We focus here on the statistical "evidence" for bias against soldiers.

There have been a number of Police Service for Northern Ireland (PSNI) investigations into legacy deaths. These includes those resulting from referrals from the Attorney General for Northern Ireland to the Director of Public Prosecutions and consequent decisions as to whether to prosecute suspects.

As a result of these investigations, there have now been the first decisions to prosecute members of the security forces in relation to a conflict related deaths since the 1998 Belfast/Good Friday Agreement. There have been two cases, the first related to the killing by a military patrol in 1974 of a young civilian adult with learning disabilities; for which one solider has been charged. The second relates to the killing of a republican leader in 1972, for which two soldiers have now been charged.

There has been a considerable backlash from sectors of the security force, media and political establishments both to the uncovering of human rights violations in Police Ombudsman reports and to soldier prosecutions. This includes allegations from members of the UK Government that the justice system is 'biased' against soldiers and a campaign arguing that such charges constitute a 'witch hunt' against the military.

Proceedings during the conflict

Officially cited estimates of the number of (Irish) republican and (pro state) loyalist paramilitary prisoners during the conflict range from around 20,000–40,000. These figures will relate to a range of offences. Convictions of state actors are more quantifiable given small numbers. In relation to fatal shootings, the British Army's official report of its operations in Northern Ireland (known as Operation Banner) cites that there were only four convictions of soldiers during the whole of the conflict, (one of which was subsequently overturned on retrial). In other cases the soldiers served only a small part of their sentences before being released under an Executive Order and returned to the army.

It is estimated that state actors were directly responsible for around 360 conflict deaths, around 10% of the total. This figure does not, however, include deaths attributable to security force collusion with paramilitary organisations.

One NGO representing victims of state use of force estimates that when factoring in collusion state culpability would rise to around a third of deaths. It has not been possible to determine an accurate figure in the absence of effective investigations into the past.

In relation to the total number of deaths directly attributable to state actors in the conflict, academic research has found that 63% of victims were undisputedly unarmed, with only 12% confirmed as having been in possession of a weapon. There is evidence of significant deficiencies in investigations into state killings, and of interference in the prosecutorial process, which led to very few prosecutions of state actors. Between 1970 and 1973 (the most violent period of the conflict) investigations into the soldiers' actions were not conducted by the regular police but by the Royal Military Police (RMP) in a process characterised by procedural anomalies. There is clear authority from the domestic courts that RMP investigations, when judged by the standards of 1971-72 did not meet legal requirements under Article 2 ECHR. Between 1969 and 1974 there were no criminal prosecutions against state actors in relation to deaths. In this period 189 people were killed by state actors, 170 by the military.

Legacy investigations into conflict related deaths

Many of the patterns during the conflict subsequently re-emerged in legacy investigations following the 1998 Agreement. To date there has not been a single conviction of a member of the security forces as a result of a legacy investigation.

The PSNI Historical Enquiries Team (HET) was established in 2004 with a remit of re-examining conflict related deaths between 1969 and 1998. A two stage process of 'review' and full 'investigation' was subsequently adopted. Not one of the cases referred for full investigation by the HET was a state involvement case. In relation to disaggregation of protagonists responsible for the 2000 deaths reviewed by the HET – the PSNI has set out the following statistics:

The HET completed reviews of 1,625 cases, which related to 2,051 deaths; of these 1,038 were attributed to republicans, 536 to loyalists, 32 to the army, and 9 cases where it is not known.

Ultimately the HET was stood down following a highly critical inspection by the official HM Inspector of Constabulary. This inspection found that the HET had in fact given preferential treatment to soldiers under investigation. The PSNI Chief Constable consequently directed that all 238 military cases that had been in the remit of the HET be the subject of a fresh investigation and established a new PSNI Legacy Investigations Branch (LIB). The LIB caseload reportedly involves 530 killings carried out by republicans, 271 by loyalists, 354 by the security forces, and 33 other killings (a total of 1,188). The higher number of security force cases reflects the deficiencies in previous investigations.

In relation to contemporary prosecutions, since the current Director of Public Prosecutions came to post in 2011 his office states there have been 17 prosecutorial decisions in legacy cases since this time, which break down as follows:

- 8 cases relate to alleged offences attributed to republicans, in 7 of the cases decisions were taken to prosecute
- 3 cases relate to loyalists and have resulted in prosecutions
- 3 cases relate to soldiers, two of these have resulted in decisions to prosecute and one a decision not to prosecute
- 3 cases relate to police officers, in two decisions were taken not to prosecute

The matter is clear – there is no evidence to support the allegations of bias or lack of proportionality in how the criminal justice system here treats soldiers in legacy cases. In fact there is a deliberate attempt by sections of the media and government to frustrate accountability for crimes that may have been committed by soldiers in Northern Ireland.

Will there ever be accountability for war crimes in Iraq?

The ICC's preliminary examination

In May 2014, Chief Prosecutor of the International Criminal Court (ICC) Fatou Bensouda announced that she had decided to re-open a preliminary examination into war crimes allegedly committed by British soldiers during the Iraq war and occupation.

Bensouda's decision followed in the wake of a "devastating dossier" of evidence relating to allegations of war crimes by British soldiers being provided to her office by Public Interest Lawyers (PIL) – a relatively small law firm based in Birmingham – together with the Berlin-based European Center for Constitutional and Human Rights (ECCHR).

ICC prosecutors have made only limited progress to date. Three years after it was opened, the preliminary examination – the term used for the phase where prosecutors decide if there is reasonable basis to proceed with a formal investigation – continues to focus on whether crimes that fall within the jurisdiction of the Court were likely committed. This is surprising to some because the material submitted by PIL and ECCHR is quite substantial, involving allegations and supporting evidence relating to hundreds of cases of torture, other forms of ill-treatment and unlawful killings. If ICC prosecutors are stepping rather carefully in this case, this may be partially explained by the UK's international standing, diplomatic leverage and the country's general support for the Court. However, the strategies adopted by the British government, including its targeting of involved lawyers, also appears to be impacting how this examination is proceeding.

The closure of PIL and IHAT

PIL was shut down last summer after Britain's Legal Aid Agency ended its contract with the company. Government officials further took the unprecedented step of urging Britain's Solicitors Regulation Authority to pursue PIL's lead lawyer, Phil Shiner, and other British lawyers involved in the Iraq claims before the Solicitors Disciplinary Tribunal (SDT). In February this year, Shiner was struck off the bar following an SDT finding of misconduct – some of which Shiner admitted to – relating to paying Iraqi middlemen to find claimants.

Besides impacting ICC prosecutors' ability to obtain clarifications from involved lawyers, these developments are also likely to put ICC prosecutors on the defensive due to a perception that they need to counter the government's narrative that the claims are all vexatious.

The government's targeting of involved lawyers has also impacted accountability processes in Britain. With reference to Shiner's misconduct and following a recommendation by the Commons Defence Sub-Committee, the government recently closed the Iraq Historic Allegations Team (IHAT), the national body tasked with investigating claims of abuses in Iraq. For many politicians, the rationale was that IHAT had to be closed because PIL had been closed. According to this understanding, the vast majority of cases before IHAT were spurious by virtue of Shiner's misconduct. While Shiner's conduct should not be excused, one needs to differentiate between this and the credibility of the claims he took forward. What is more, about one third of IHAT's caseload had nothing to do with PIL.

Any road ahead for accountability?

With IHAT being terminated, Defence Secretary Michael Fallon recently announced that remaining cases were to be investigated by service police. Expected to number "around 20", the caseload to be dealt with by the service police is much smaller than IHAT's. While it is unclear exactly how this number has been arrived at, it seems clear that "anything that comes from PIL goes in the bin", as Nicholas Mercer – who served as the most senior legal advisor to the British Army during the Iraq War – so plainly puts it.

The government has made almost no information available concerning the service police investigations.

Should the ICC examination proceed despite the challenges associated with PIL's closure, prosecutors are likely to focus on the ICC's complementarity regime whereby the Court can only prosecute cases that national authorities are unable or unwilling to pursue. If so, one key question will be whether the closure of IHAT – and the statements made by government officials in this and other contexts – could be taken as an indication of unwillingness.

What is making British authorities so uncomfortable?

That British authorities are uncomfortable with the accountability processes discussed here is unsurprising because the allegations are that senior civil servants either authorized or condoned abuses in Iraq. No 'smoking gun' has been presented to support these allegations.

However, in the Baha Mousa Inquiry, which concerned the beating to death an Iraqi detainee, Sir William Gage found that there had been a "gradual loss of the doctrine" prohibiting the use of the so-called five techniques – involving hooding, white noise, food and drink deprivation, painful stress positions, and sleep deprivation – in guidelines on interrogation. Gage pointed to a "corporate failure" in the Ministry of Defence as among the causes.

In a rare example of former service personnel speaking out about the alleged abuses, Mercer says that he personally witnessed detainees subject to conditions that breach the Geneva Conventions. Mercer also explains that he saw written instructions to interrogators allowing them to use of some of the five techniques, specifically hooding and stress positions.

The Ministry of Defence denies there was any authorization of crimes in Iraq, arguing that any crimes committed were the result of a 'few bad apples'. Yet, the Ministry has paid out compensation to hundreds of Iraqis in settlements of suits brought by British lawyers, making some question the government's narrative that no systematic abuses took place in Iraq.

Broader ramifications of the government's campaign

Leaving aside how ICC prosecutors will react to IHAT's closure and the issues surrounding PIL's closure and Shiner's disbarment, the government's campaign against PIL and other British law firms involved in the Iraqi claims has proven highly 'effective'. The government's narrative of 'ambulance chasing lawyers' has come to the detriment of any real debate in Britain about accountability for crimes in Iraq. It also appears to have created a climate where human rights lawyers could become excessively careful about challenging the armed forces.

Prime Minister Theresa May's statement during her Party's conference in Birmingham in October 2016 will hardly encourage anyone to think otherwise: "We will never again — in any future conflict — let those activist left wing human rights lawyers harangue and harass the bravest of the brave, the men and women of our armed forces".

This short article from Thomas Hansen forms part of British Academy funded research relating to the accountability processes for alleged war crimes by British soldiers in Iraq, see https://www.ulster.ac.uk/staff/t-hansen. A larger academic publication will come out on the topic later this year: "Accountability for British War Crimes in Iraq? Examining the Nexus between International and National Justice Responses", in Morten Bergsmo and Carsten Stahn, Quality Control in Preliminary Examinations: Reviewing Impact, Policies and Practices, TOAEP, forthcoming (November 2017)"

Beyond a Spin of the Wheel – GPs and mental health care

" we all have the same issues but if we are one big voice shouting it will get heard a lot quicker"
Karen McGuigan, STEPS

In June this year the Mental Health Rights Campaign, a group of mental health rights activists supported by PPR, launched their campaign for timely and appropriate mental health care from GPs. To coincide with the launch the group released the 'Beyond a Spin of the Wheel' report – the result of over a hundred surveys and a dozen focus groups carried out with 70 mental health service users in Belfast, Bellaghy, Cookstown, Derry, and Draperstown.

Mental health service users reported that a key problem was not being able to receive adequate mental health care through their GP. This is especially troubling as it is estimated that approximately 91% of people with a mental health problem will be treated in the primary care system. Under international human rights law, people have the right to enjoy the highest attainable standard of mental health. The UN Committee on Economic, Social and Cultural Rights has spelt out the relevant duties imposed on the NI Executive, including *"timely and appropriate care, confidentially, skilled medical personnel, access to information, and access to appropriate mental health treatment and care."*

From the range of issues that group members identified as barriers to realising their right to timely and adequate mental health care, they chose three key areas to focus on:

• Lack of mental health expertise among GPs

"the doctor I had, all the rest of the family went to him, and out of unity I wanted to stay with him but he couldn't understand mental health, he couldn't understand self-harming for a start." – Mental Health Service User
The Campaign heard that mental health service users' most pressing issue was that their GPs were not adequately trained to indentify and respond to mental ill health challenges. Research has shown that GPs are not obligated to undergo mental health training, and FOIs we submitted that showed that very few were taking up voluntary training. Considering that high numbers of people seek help with mental health problems at their GP, the lack of training shows that patients will likely be receiving inadequate care.

• Difficulties with getting GP appointments

While difficulties in accessing appointments is a widespread problem, the effects of barriers and delays on people with mental ill health has the real potential to exacerbate their condition. We heard of recurring issues with navigating appointment systems – from long waiting times to inaccessible systems for booking appointments.

"it's an issue when people are ill with mental health, with depression, they are so demotivated that they don't even see the point in going to the GP, the depression is so heavy, and when you have to fight to get an appointment, and I mean fight in front of other people, it's demoralising and devaluing and its not doing anybody any good for confidence and self-esteem" – Mental Health Service User

• Over prescription of medication by GPs

Linked to the issue of lack of expertise, people told us that when GPs did recognise mental ill health in a patient, they were too reliant on prescribing medication to deal with it. This is further evidenced by the fact that Northern Ireland has the highest prescription rate of anti-depressants in the western world.

Mental Health Rights Campaigners with the Beyond a spin of the Wheel Report

The issue is related to the lack of mental health expertise among GPs, but also to structural and resource problems, such as 10-minute appointments being insufficient time to conduct a thorough assessment.

"if people go in and say they are depressed, they write you a prescription, they don't question anything, like 'how do you think things are', or 'what would help you'. It's not like a conversation they have, it's just like 'well here are tablets, go ahead', it's never like 'do you think we could help you with speaking to somebody'". – Mental Health Service User

Solutions

It is widely acknowledged that Northern Ireland fares worse in relation to mental health provision than elsewhere in Ireland or Britain. Mental ill health prevalence is 20% - 40% higher than England, yet spending is 10-30% lower. In the foreword to the report, East Belfast GP Dr. John Kyle highlighted how this was happening in the 'perfect storm' of a NHS crisis, a GP crisis, prescription medication subscriptions being at an all time high, and soaring rates of mental ill health

Campaigners were thus keen to propose practical potential solutions, including:

- Mandatory mental health training for GPs and other relevant practice staff
- Other health professionals with the necessary expertise and skills to work alongside the GP
- A separate, designated phone line for making mental health related appointments with the GP
- Introduction of an 'auto alert' system so receptionists know a patient has mental health issues
- Longer appointment times including a default option of a double appointment for mental health issues

Since the launch of the report, groups have delivered the report to GPs and MLAs in 10 areas and secured mainstream and local coverage. The GPs at the Deep End' group in Scotland, who work in 100 general practices serving the most socio-economically deprived populations, , commended the human rights based approach and labelled the report a "powerful tool" and have endorsed several of its proposals.

The Mental Health Rights Campaign now intends to campaign for the changes outlined in this report and to monitor if and how people's experiences of seeking help from their GP for mental health changes. In this regard, the campaign looks forward to engaging with the Health and Social Care Board as the contracting body for GP services, as well as with GP representative bodies including the Royal College of GPsNI and the British Medical Association (NI) and individual GPs themselves.

Luke Butterly *PPR Project*

Protecting the Agreement from Brexit – Practical Suggestions

The withdrawal of the UK from the EU will have a profound effect on the legal and constitutional underpinning of Northern Ireland, its relations with the Irish state and UK-Ireland bilateral relations. The UK and Ireland's common membership of the EU was an unpinning assumption in the Belfast Good Friday Agreement (BGFA) and the UK's adherence to EU law regulates the powers and legislative operations of the devolved institutions. The equal rights of Irish and British citizens, a principle of the BGFA, in great part relies on the equal rights of both as having EU citizenship. The lack of significant border regulation – effectively free movement across the island – is largely due to common membership of the EU, North and South, as well as the improved security situation. Many equality and anti-discrimination provisions in Northern Ireland, which have particular importance in a divided society, rely on EU law.

All of these impacts could have a destabilising effect on the constitutional, political and legal settlement that, in the main, ended the violent political conflict which devastated the people of Northern Ireland and gravely affected those in the rest of the UK and Ireland. While it is unlikely that any one particular effect of leaving the EU would destroy the peace settlement, the cumulative impact could begin to unravel it. In particular, any diminution in the protection of rights of the people living on the island could reduce trust in the BGFA institutions and any unravelling of the settlement would be disastrous for human rights. A continuing preoccupation of CAJ will therefore be the protection of the integrity of the peace settlement and the various agreements that make it up. Given that violent conflict always involves a bonfire of human rights, protecting the peace settlement is our top priority.

A great many people have been pointing out the dangers and threats that Brexit poses to the peace process; fewer have been to the fore in proposing solutions. This is partly because of the complexity of the issues, partly because the UK Government seems to have no clear idea what it wants from the negotiations and partly because some of the potential solutions raise huge issues such as whether the UK should stay within the single market and/or the customs union.

CAJ has been working with colleagues to put forward suggestions (rather than firm policy positions) that might help in the short and long term. What follows is a brief summary of our thinking so far.

1) Amending the Withdrawal Bill to make the British-Irish Treaty legally enforceable

The Belfast Good Friday Agreement is made up of two parts: the text of the "Multi-Party Agreement" itself, made between some Northern Ireland parties (not including the Democratic Unionist Party, who opposed it) and the British and Irish Governments, and an Agreement between the Governments of the United Kingdom and Ireland, which has the status of an international treaty and is lodged at the United Nations. The treaty is attached as an Annex to the Agreement and, amongst other things, contains the "solemn commitment to support, and where appropriate implement, the provisions of the Multi-Party Agreement" by both governments.

Unfortunately, neither the treaty nor the Agreement itself is directly enforceable in the courts. The UK Government's Position Paper on Northern Ireland and Ireland accepts that "the British-Irish Agreement is binding on the UK Government and Irish Government, and gives the commitments on equality, parity of esteem and citizenship legal force in international law" (Para 13), but there is no mechanism for adjudicating when an act or law breaches the Agreement nor to enforce adherence to it. Legislation, including the "constitution-like" Northern Ireland Act 1998, implements many of the structural provisions of the Agreement but not all of the commitments made therein.

One way of the UK Government demonstrating its oft-repeated commitment to the Agreement would be to make the treaty provisions enforceable in UK domestic law and hence in the courts. A simple amendment of the Withdrawal Bill to the effect that all public authorities must act compatibly with the British-Irish Agreement could accomplish that.

2) Maintenance of EU human rights and equality protections

The Withdrawal Bill, as passed at its Second Reading, specifically removes the protection of the EU Charter of Fundamental Rights. Amendments have already been put in to reverse this and we would support those moves together with any other amendments designed to maintain human rights and equality protections.

3) Equality of citizenship – a reciprocal agreement

After Brexit, there will be large populations of both Irish and British citizens living in Northern Ireland. Irish citizens will continue to be EU citizens, with the right inter alia to move freely to and within the EU and to live and work there without discrimination; British citizens will not. This will mark a major distinction between the citizenships and thereby undermine the equality on which the BGFA was based.

One possibility to resolve the issue is that those British citizens whose eligibility for UK citizenship arises from being born in Northern Ireland could be regarded as EU citizens along with their Irish neighbours. It seems unlikely that the EU negotiators would consider any movement outside the established categories of citizenship except on the basis of reciprocity. In other words, if all those born in Northern Ireland with Irish or British citizenship were to retain EU citizen rights throughout the 27 member states, other EU citizens would have to have the same rights within Northern Ireland.

The reciprocal measure would therefore be to guarantee that the rights that EU citizens currently possess would, in Northern Ireland, continue undiminished, as far as practically possible. The proposal would therefore be **that all EU citizens, not just current residents, would have the right to enter, live and work in Northern Ireland on a similar basis as at present**. This is envisaged as **the UK side of a reciprocal agreement with the EU that grants EU citizenship, or at least the rights thereof, to all those born in Northern Ireland with the right to be Irish or British, irrespective of which national citizenship they choose.**

4) A duty on the UK Government to guarantee equality of rights of Irish and British citizens

Given that the citizenships are those of two sovereign states (plus at the moment citizenship of the EU) there must be both appropriate legislation relating to the North (which could be the Bill of Rights) and also some level of agreement or reciprocity with Ireland (and in the context of Brexit) with the EU.

5) Prohibition of immigration controls on the border

Various agreements have been made between Ireland and the UK around the Common Travel Area, most recently in 2014, but these are explicitly not legally binding. The only way the right to freedom of movement between Ireland and Northern Ireland can be legally enforceable in the UK is through legislation (which could be the Bill of Rights or some other legal instrument).

6) Guarantee of equivalence of rights across the island

The concept of equivalence has to work both ways to have any meaning. The aim can be expressed as ensuring that the rights of an individual are protected equally wherever they may be on the island, though the mechanisms will be different as they are those of the two sovereign states involved. This is essential to make free movement across the island a reality.

We will be working with colleagues to develop these and other proposals as the tortuous process of negotiation and legislation continues.

Civil Liberties Diary - July/August

5th July

The First Minister of Wales has stated that it will offer free abortions to Northern Irish women, following the commitment by England to do the same.

21st July

The case of an American man being forced to stay in Northern Ireland due to his wife's refusal to declare herself as a British citizen has been raised in the Irish Senate. After his wedding in 2015, Mr DeSouza gave his passport to the Home Office to apply for a residency visa, but because his wife claimed to be an Irish citizen, the Home Office would not allow the application to proceed. Mrs DeSouza was required to claim British citizenship for the application to be made, despite the fact that she has the right to identify as Irish under the Good Friday Agreement. Irish ministers called for the Home Office to end the attempt to 'impose British nationality' on Mrs DeSouza.

24th July

The BBC Director-General has agreed to take action to address the gender pay gap, after receiving a letter about the issue, signed by over 40 female reporters and presenters. This letter came after the BBC's highest earners were revealed, and a significant gap was shown between men and women, with the highest male earner being paid more than four times that of the highest female earner.

27th July

The Supreme Court of the UK is to hear a petition for a public inquiry into the death of solicitor Pat Finucane in 1989. Former Prime Minister David Cameron refused to hold a public inquiry, but had an investigation carried out by a senior lawyer , which found evidence of state collusion. It is this decision by Mr Cameron which will be argued to be unlawful, as an agreement had previously been made to launch a public inquiry into the issue.

28th July

The British government confirmed that freedom of movement between the UK and the EU will end in March 2019. Business leaders have expressed concern over the lack of clarity around what will happen when the freedom of movement is stopped. Brandon Lewis, immigration minister, stated that a new system would be created, and it was expected that EU nationals would have to register to work.

3rd August

The PSNI has defended its decision to allow police officers to march in uniform during the gay pride parade in Belfast. This comes after the decision was criticised as undermining the PSNI's neutrality on political issues.

8th August

A coroner has claimed that, at almost every inquest he is involved in, article two of the Human Rights Act is mentioned. This article concerns the right to life, and many inquests involve claims that the state has not given this right adequate protection.

9th August

Labour MP Stella Creasy, who was the driving force behind the decision to allow Northern Irish women to have free abortions in England, has now pledged to cover the travel costs of these women.

22nd August

A report by jail inspectors into Maghaberry jail has recommended that courts should reconsider keeping people in prison while mental health evaluations are being carried out on them. The report described 10 cases of suicide among inmates since 2012 and commented that the jail was not a suitable environment for many inmates who have complex mental health issues.

Compiled by Fiona McGrath from various newspapers

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