



Promoting Justice / Protecting Rights

ANNUAL REPORT 2020

PROMOTING JUSTICE AND PROTECTING RIGHTS DURING A PANDEMIC



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Promoting Justice Protecting Rights



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CHAIRPERSON'S FOREWORD

Dr Anna Bryson

I was delighted and honoured to be appointed Chair of CAJ at the beginning of this year. Before turning to the substance of our annual report I would like to pay tribute to my predecessor, Louise Mallinder, for her hard work and dedication as Chair (2015-2019) and for the collegiality and support she has shown me as I took up the reins.



When I stepped into this role in January 2020 there was cause for hope. The devolved institutions had finally been restored on the basis of the New Decade, New Approach (NDNA) agreement. This was underpinned by a range of detailed commitments including the establishment of an Ad Hoc Committee on a Bill of Rights and progressing long unfulfilled commitments in relation to Irish language legislation and an anti-poverty strategy. We also eagerly anticipated the promised introduction of legislation to implement the legacy aspects of the Stormont House Agreement within 100 days. Throughout the year CAJ has systematically and meticulously charted progress (or rather lack of progress) on these various commitments. It has done so against the backdrop of a chaotic Brexit – a process that continues to disrupt the peace settlement and to put human rights and the rule of law at risk. In particular CAJ has endeavoured to highlight the fact that a no-deal situation will disproportionately affect the most vulnerable in our society – individuals who are already living with the impact of austerity-motivated spending cuts and social security restructuring. Together with all those who value the rule the law, we have voiced concern at the British government’s shocking admission that it proposes to deliberately breach international law and the fact that the Internal Market Bill (now at Report stage) is set to undermine the infrastructure of the Northern Ireland Protocol. Dealing with the myriad human rights implications of Brexit together with ongoing work to support progressive governance and accountability and build a fairer society clearly prescribed a busy 2020 for CAJ. And then COVID-19 struck.

According to the European Centre for Disease Prevention and Control, since the beginning of 2020 more than 68 million cases of COVID-19 have been reported in affected countries and more than 1.5 million related deaths have been recorded. In March of this year the WHO declared that the viral disease had reached the status of a global pandemic. Bearing in mind the international human rights guarantee to the highest attainable standard of health, CAJ took the position that the scale and severity of the threat from this disease clearly justified certain restrictions on individual rights such as freedom of movement. At the same time, we have been mindful of the need to balance the universal right to health with non-discrimination. As our Director, Brian Gormally, notes in this report, the pandemic has exposed many of the deep inequalities and distorted values that have to date been considered ‘normal’ in our society. It has also raised the spectre of the securitisation of health and the dangers of COVID-19 restrictions becoming a pretext for fortified surveillance and policing infrastructures and thus exacerbating existing inequalities in the treatment of marginalised groups. CAJ has thus consistently campaigned for a public health response that prioritises human rights ahead of security, with targeted resources to support those most severely affected by the consequences of the virus.

Responding to the unprecedented challenges of Brexit and COVID-19 offered an interesting backdrop to the launch of the new three-year Strategic Plan in October. In many respects the disruption of 2020 presented an opportunity – unsettling habits and structures that seemed rigid and certain. Likewise, the Black Lives Matter movement provided a welcome wake-up call with regard to racism and inequality. In response, CAJ has been forging ahead with new and significant work on citizenship and migration and on combatting “hate crimes.” The immigration project has gone from strength to strength, providing strategic legal research and advice and

building alliances with relevant NGOs, charities, legal practitioners and politicians. It is also clear from this report that CAJ, working closely with our other partners in the Equality Coalition, has been instrumental in ensuring that a commitment to equality effectively unites a diverse range of interests and enables them to lobby collectively with maximum impact. The need to make space for these relatively new areas of work inevitably invited reflection on the priority that should be afforded to our post-conflict work.

Whilst acknowledging the need to adapt to new and emerging challenges we agreed that the fall-out from both Brexit and COVID-19 render it more important than ever to deal with the toxic legacy of the conflict. This is essential if we are to combat a culture of impunity and adhere to the principle of non-recurrence, ensuring that future generations do not end up carrying the burden of the conflict which many of us lived through. In spite of the Northern Ireland Office's "about-turn" on legacy commitments on 18 March, the Model Bill Team comprised of CAJ staff and academics from Queen's University Belfast, has continued to lobby for the implementation of the Stormont House Agreement and to seek human rights compliant solutions to issues that stand in the way.

In April, the team published a major report reviewing all of the legacy proposals put forward to date and outlined a template against which to judge these proposals – namely compatibility with the Good Friday Agreement, the Stormont House Agreement and binding human rights standards. Throughout 2020 CAJ has also made substantive submissions on legacy-related matters (including proposed legislation such as the Overseas Operations (Service Personnel and Veterans) Bill and the Covert Human Intelligence Sources (Criminal Conduct) Bill to the Northern Ireland Affairs committee, the Joint Committee on Human Rights, the Committee of Ministers and the UN Committee Against Torture. In addition, CAJ continues to work on strategic litigation in relation to specific conflict-related offences.

This comprehensive report attests to CAJ's tireless work in the face of old and new challenges. With a relatively modest budget and a staff of seven, the organisation continues to deliver a staggeringly impressive volume of work across a wide range of issues. On behalf of the Executive, I would like to sincerely thank all of our staff and volunteers for their ongoing commitment and dedication, and for their flexibility and innovation in responding to the challenge of transitioning to online and remote working arrangements. Our new office manager, Paula Gourley, came on board at the beginning of the first lock down. She nonetheless somehow managed to hit the ground running, delivering efficient and cheerful support to the staff and Executive.

As we welcome Paula to the team it is of course fitting to pay tribute to her predecessor, Liz McAleer, who retired in March. Before she departed, I had the pleasure of recording some of Liz's stand-out memories after more than thirty years of service with CAJ. These included typing every word of the first Civil Liberties handbook, teaching Paul Mageean to type, strategising at Christine Bell's house in Malin Head, and launching the Gender Equality Group's 'One World Quilt' at the 1995 UN World Conference for Women in Beijing. What struck me most as I listened to Liz, however, was the deep sense of camaraderie – what she calls the sense of family – that underpinned the work. In the thirty years since Liz joined the organisation CAJ has grown and evolved to meet the profile of an international-facing human rights organisation that delivers across a diverse range of activities including lobbying, research, monitoring and litigation.

In my experience of serving on the Executive and in my short time as Chair I am pleased to report that the sheer volume of work undertaken in recent years has done nothing to dilute the warmth, humanity and dedication of the CAJ family. The challenges ahead are not to be underestimated but, having withstood 2020, I think we can rest assured that the organisation will carry forth into the New Year a steadfast and renewed determination to continue the fight for a fair and just rights-based society.

INTRODUCTION

Brian Gormally, CAJ Director

Since our last Annual Report, the world has changed. A pandemic grips the planet, with over 68 million cases of Covid-19 infection and over one and a half million deaths caused by the virus. This is the most significant change on a global level and there are many consequences for human rights, negative and positive. The

eruption of the Black Lives Matter movement, sparked by killings of black people by police in the USA, has given a new impetus to the anti-racist struggle. The end of the populist, racist and irrationalist rule of Donald Trump as US President is also of global significance, giving hope to millions of people round the world but also leaving behind a damaged social and physical environment.

In our own part of the planet, we have seen the election of the Boris Johnson government with a large majority, a manifesto which threatened human rights and a developing reputation for incompetence and U-turns. The Ireland/Northern Ireland Protocol, agreed with the EU, appeared to have at least banished the prospect of a hard border on our island after Brexit. The Government's introduction of the Internal Market Bill, which admittedly breaches the Protocol and hence international law, also breaches the Good Friday Agreement and again throws the spotlight onto this region in the context of the still incomplete (at the time of writing) negotiations between the UK and the EU.

We have also seen the re-establishment of the institutions at Stormont based on the New Decade New Approach document which contains many progressive commitments. While the Executive has struggled to deal in a unified manner with the pandemic, devolution is still operational. We particularly welcome the establishment of an Ad Hoc Committee on a Bill of Rights at Stormont – there is now at least another forum through which the arguments for a comprehensive Bill of Rights, including economic, social and cultural rights, can be pursued.

Meanwhile, the British Government, in contrast to commitments made most recently in the manifesto for the December election and the New Decade New Approach document, seems to have reneged on its promise to legislate to implement the Stormont House Agreement. A two page Written Ministerial Statement proposed a fast-track system with restrictions on prosecutions. The Government is also considering discriminatory impunity for soldiers and perhaps other State agents who were engaged in the conflict. This throws the whole area of legacy up in the air and creates another source of grief and bitterness.

We continue to struggle with the uncertainty in many areas of life caused by a chaotic Brexit process, which may still end up with a “no-deal” UK-EU future relationship at the end of December. Issues of citizenship and migrant rights have come to the fore, with resolution in some areas and none in others. At the same time, more and more people and organisations have been drawn into the fight for equality. This is absolutely basic to any human rights activism and the pandemic, in particular, has exposed the full levels of inequality and exclusion that shame our society.

The body of this report demonstrates how CAJ has responded to the challenges of this extraordinary year. In many ways, the report demonstrates the continuing relevance of a human rights approach to social ills, even when the global context changes. In other ways, this year has shown the need to be flexible and responsive as new issues, or old issues in new contexts, show themselves.

In the past few months, CAJ has been considering how its priorities need to develop as the world has changed and we have produced a new three-year Strategic Plan. The general outlines of how we will move forward are described in the following section.



PRIORITIES IN RESPONSE TO A NEW SITUATION

In keeping with the idea of promoting a positive goal for human rights activists, we will formulate our vision as a **peaceful society based on human rights and equality**. This brings together the necessarily interlinked activities of peacebuilding and human rights activism and expresses our hope and aim for the future.

That peaceful society must have a number of elements or supporting pillars. Given our unique geographical and constitutional position, combined with the need for cross-community participation in government, the devolved institutions have great significance. We will therefore work for and support **democratic, progressive governance** in this region. While the New Decade, New Approach document gives a basis for a new stability in the Stormont institutions, it will be a priority to monitor and hold the Executive to account for progress on the rights based commitments within the document, or the lack of it. The economy and social life will also be significantly impacted by the implementation of the Protocol and we will have to protect the peace agreement from any threat of a hard border.

However, governance is broader than government and we wish to see a human rights ethos and the means to enforce it spread throughout public authority decision making. The prime way of doing this would be through a Bill of Rights and a new emphasis, especially in the aftermath of Covid-19, on social, economic, cultural and environmental rights. We must also look to the future and ensure that the need for fundamental rights protections is recognized in constitutional conversations.

A peaceful, rights based society requires accountability in its institutions, especially those authorized to deploy coercion. **Accountability in policing, criminal justice and public administration** is therefore an important pillar of the good society. We will continue to engage actively with policing and keep a watching brief on other aspects of the criminal justice system including prisons. In a post-Covid landscape, we will argue for a rights based renewal of health, social care and other social provision, together with accountability for failings in the management of the pandemic. We will engage with international treaty monitoring bodies to ensure international oversight of the UK's human rights record.

As a post-conflict society, we need to combat impunity and work for a **just resolution to the legacy of conflict**. In spite of the apparent abandonment of the Stormont House Agreement by the UK Government, we will work for a rights-compliant mechanism for dealing with the past and the resolution of the outstanding cases from the European Court of Human Rights through the full implementation of the Agreement. We will continue to campaign for a full, independent public inquiry into the Finucane case.

Racism of any kind is the antithesis of human rights since they are based on the equal dignity of human beings. Our society is still scarred by, but still tolerates pervasive and corrosive sectarianism, which intersects with racism based on skin colour and with other forms of prejudice and hatred. We must therefore work for a **society where prejudice is confronted and tackled** supporting the suppression of hate crime and incitement to hatred, intervention to remove racist, sectarian, homophobic and misogynist and other hate expression from public space and aiding anti-racist movements.

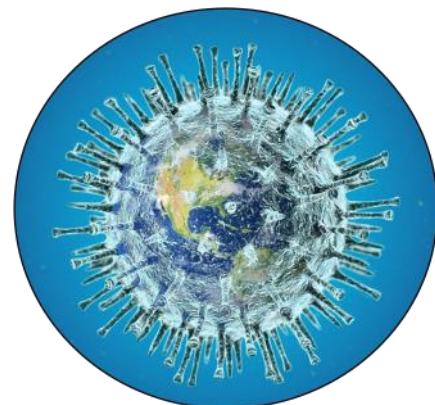
Brexit has brought issues of citizenship, immigration and movement of people across this island to the fore. Anti-immigrant rhetoric and the imposition of a hostile environment on asylum seekers and refugees by government dangerously stokes racism and leads to wholesale abuse of human rights. We have responded by developing an immigration project designed to achieve a **fair, humane immigration system**.

Equality runs like a golden thread throughout human rights theory and practice. In a divided society, it has been a proper preoccupation of CAJ since its foundation. **Increased equality** is a basic pillar of a new society and has to be one of our basic priorities. We have developed and supported the Equality Coalition as a uniquely effective, collaborative engine of ideas and activism. We will continue working with and through the Coalition in a range of activity flagged in this plan. We will also continue our successful work in helping to make the statutory equality duty into a practical and effective reality in public administration.

International solidarity is a given for organisations basing their ethos on international human rights standards and we will continue to participate as fully as possible in the International Federation of Human Rights (FIDH). International solidarity has also helped bring peace to this region and is a continuing necessity. We also have a responsibility to promulgate the positive and negative lessons of our struggle for peace and human rights.



RESPONSE TO CORONAVIRUS



The Covid-19 pandemic has preoccupied the world at large and CAJ has been no exception. The pandemic has **exposed the gross inequalities** and the distorted set of values that so far have been “normal” in our society. Specifically, it has also exposed the impact of the failure to implement the rights framework envisaged in the peace agreements, including the Bill of Rights and an anti-poverty strategy. The unequal impact of the virus will be further felt in economic, social and environmental rights (health, work, adequate standard of living, food safety, energy) terms by those who bear the brunt of its economic impact, concurrently with the out-workings of Brexit.

In that sense, the Covid-19 pandemic has put an existential question mark over our entire society in raising doubt about habits and structures that seemed fixed and certain and forcing novel and disturbing policy responses. It has and will cause great suffering and hardship but also has struck a blow against complacency. The policy and political landscape has been unfrozen and there seems to be an awareness that we cannot and should not go back to normal. The task will be to use the, probably temporary, opportunity of an increased willingness to embrace progressive change to create a fair, just and human rights based future.

On 12 March, in response to the initial speech from Washington by the Taoiseach, CAJ asked its staff to work from home and avoid social contact with others. After some settling in, working from home has generally been a positive experience for us and has seen an increase, if anything, in our activity and work rate.

A few days after this, we produced a detailed briefing on the **powers taken by the UK Government** (including powers given to devolved governments) to counter the epidemic. Our general position was that emergency legislation in a time of such crisis can be necessary and we would actively support positive action to protect human rights – primarily the right to life and health of the population as a whole, but also basic socio-economic rights (right to food, shelter) of the affected population. We noted that emergency legislation can also restrict human rights, such as the right to liberty and freedom of movement, as in this case, as necessary steps to contain the virus. However, the general principle was that emergency measures taken for such reasons must be necessary, proportionate, and time bound for the duration of the emergency. There should also be safeguards against abuses of power.

We raised specific problems with the legislation, such as that emergency powers were to last two years, and also queried the extended range of powers granted to, amongst others, immigration officers and called for hostile environment measures to be discontinued. In fact, from an early stage there were problems with the local enforcement of restrictions placed on the general public by coronavirus regulations.

We had early concerns about statements made by the PSNI about the interpretation and enforcement of emergency health regulations and wrote to the relevant Assistant Chief Constable expressing these. We also prepared two extensive briefings on Coronavirus quarantine and travel restrictions within the Common Travel Area. We had particular concerns about **apparently discriminatory policing of the Black Lives Matter protests** on 6th June and produced a joint briefing with Amnesty International around these. We met with protest organisers, the Policing Board Human Rights Adviser, other NGOs, politicians and the PSNI themselves. While not all issues are resolved, we made it very clear that the policing of the various restrictions was under detailed scrutiny. The Human Rights Advisor of the Policing Board led a thematic review of the policing of Covid-19, while the Police Ombudsman carried out an investigation into whether there had been differential policing of the Blacks Lives Matters protests and the Protect our Monuments protest at Belfast City Hall on 13th June.

The Policing Board Report into the policing of the Covid crisis was published on 12th November. It quoted from our briefings and correspondence and found that the policing of the Black Lives Matter protests had not taken sufficient

account of the right to protest nor of the attempts by organisers to maintain social distancing. The assessment considered that the policing approach had been unlawful and the Report recommended that all Fixed Penalty notices issued and potential prosecutions should be reviewed by the PSNI and the Public Prosecution Service. Other recommendations suggested further engagement between the PSNI, organisers of minority ethnic communities and human rights NGOs as well as more cooperation between the Policing Board and the Ombudsman.

The PSNI introduced the use of “**spit and bite guards**” (hoods) in April despite ongoing discussions with the Policing Board about their deployment. The Policing Board report accepted that these are not an alternative to proper PPE for police officers and their deployment is a “use of force.” The Report recommends that they are phased out and their use in any event ceases on 31st December 2020. A number of other recommendations on making law properly in relation to Covid 19 regulations are directed towards the Executive and Assembly.

While we await the conclusions of the Ombudsman’s report, we can see this series of events as a good demonstration of the system of oversight of the police here. While the Policing Board report is quite critical of the PSNI, the complaints of NGOs such as CAJ, protest organisers and members of the public were listened to, two investigations carried out promptly and serious recommendations made. This is a good basis on which to continue the long-term process of basing policing around human rights principles.

Other aspects of the handling of the crisis also had human rights implications. The development of a **contact tracing phone app** went ahead in Northern Ireland before Britain. We attended meetings over the summer with the Public Health Agency and wrote a detailed letter listing concerns. In detailed follow up we were assured that there was no element of privatisation in the system, that it conformed to data protection regulations and that there was no possibility of the collection of private information about users.

At the end of April, the Chief Coroner for England and Wales issued guidance which would prevent coroners investigating matters such as the lack of protective equipment (PPE) when examining Covid deaths. The Presiding Coroner for Northern Ireland assured us that no such guidance would be issued here and that each case would be treated on its merits.

In the light of the death toll in care homes and the questionable policies adopted towards them CAJ, Amnesty and UNISON called for an **Article 2 ECHR compliant public inquiry** into the matter. The Department of Health commissioned Dr Niall Herity to analyse patterns of discharges from hospitals to care homes and associated clinical decision-making processes. The exercise was conducted internally, save for a small survey among some consultant medical staff. We are currently engaged in correspondence on the findings of this report and this is a matter we are still pursuing.

More generally, there is a widespread acceptance that, following the pandemic, the health and social care service in our region must be rebuilt. There can be no return to “the old normal.” A health service that is properly resourced, which cherishes the most socially disadvantaged and offers everyone “the highest attainable standard of physical and mental health,” is required. The right of all our people to that highest attainable standard is the necessary guiding principle of reconstruction. More work is needed on how a **right to health** translates into policy development, budget allocation and prioritisation but the direction of travel must be made clear. This specifically leads into our re-emphasis on the need for a Bill of Rights and we have made these points in evidence to the Ad Hoc Committee on a Bill of Rights, both as CAJ itself and as part of the Equality Coalition. In November following the use (twice) of the ‘St Andrews Veto’ by the DUP to block proposals by the UUP health minister to extend COVID 19 restrictions at a crisis point during the second wave we quickly produced a detailed briefing note highlighting how such Ministerial decisions could have been unlawful, had the Bill of Rights been in place incorporating the right to health.

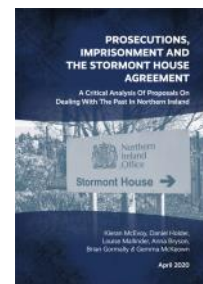
DEALING WITH THE LEGACY OF THE CONFLICT

“Overall, the fight against impunity continues – we need a British government with the will to take forward the implementation of the Stormont House Agreement for otherwise the past will continue to poison the present and future.”

This was the last sentence of the section in last year’s Annual Report on combating impunity. We raised our concerns about the failure to support the Stormont House Agreement (SHA) in the Conservative Party Manifesto for the December elections, though welcomed the commitment in the New Decade New Approach document. Meanwhile, the Model Bill Team, which consists of CAJ staff and academics Professor Louise Mallinder, Professor Kieran McEvoy and Dr Anna Bryson from QUB, worked on a paper analysing the various options for dealing with the past put forward by different interested parties.

Then, on 18 March, with no prior warning, the UK Government published a two-page **Written Ministerial Statement** which signalled the unilateral abandonment of the commitment to implement the SHA. It indicated that it would instead adopt an unclear alternative ‘fast track’ information recovery approach that would not be compliant with the UK’s duty to independently investigate conflict related deaths under Article 2 of the ECHR. This was a bombshell proposal, but the reality is that no further elaboration of their plans has since been produced by the Government. The Northern Ireland Office is supposed to be preparing legislation, but we have no indication of its detailed contents.

On 7 April, the Model Bill Team published “Prosecutions, Imprisonment and the Stormont House Agreement: A **Critical Analysis of Proposals** on Dealing with the Past in Northern Ireland.” This dealt with eleven proposals, including a blanket amnesty, ideas for a “statute of limitations” for British soldiers and the new proposal of the UK Government set out in its 18th March statement. On this last proposal, the Report concluded: “It is far from clear that this would be an Article 2 compliant process. With too high a threshold for the use of police powers to investigate, and an obligation to close cases forever once the process is completed, the process would not adequately expose human rights violations, and thus would not facilitate guarantees of non-recurrence, justice or truth recovery.”



The document was drawn upon in Written Evidence to the Northern Ireland Affairs Committee at Westminster and its Interim Report (26 October) on the UK Government proposals was critical of the lack of consultation by the Northern Ireland Office and sceptical that the Government scheme was workable and human rights compliant. To further disseminate their work, the Model Bill Team has created a new website: www.dealingwiththepastni.com. This contains all the publications, articles, submissions and media inputs that the project has produced since 2013.

In the meantime, since the NIO claimed to be developing a draft Bill, we requested to see the Section 75 equality screening document, which there are binding commitments to release under the department’s Equality Scheme. They refused to provide this, and we have complained to the Equality Commission over a consequent breach of the NIO’s Equality Scheme.

We reported on the continuing prevarication and obfuscation by the British Government to the **Council of Europe Committee of Ministers** (which oversees implementation of the judgements of the European Court of Human Rights) in April and July with an addendum in August. The Committee is overseeing the implementation of the “McKerr group of cases” from Northern Ireland (judgements given since 2001), which requires a coherent mechanism to deal with the past, as well as a number of individual cases including that of Patrick Shanaghan (in which CAJ represent the next of kin) and the case of Pat Finucane. In September the Committee of Ministers published a decision which reflected the content of our submissions as it expressed its “deep concern” that a decision on the public inquiry into Pat Finucane’s death had not taken place, concern about the lack of detail in the legacy proposals and strongly encouraged proper resourcing, including through information disclosure, of inquests and the Police Ombudsman.

The latest judicial review undertaken by the **Finucane family** was heard in October. This complained about the 19 month delay since the Supreme Court had indicated that an Article 2 compliant investigation into Pat’s death had still to take place. After stern words by the judge, the Secretary of State apologised for the delay and promised to

give information on the way forward by 30 November. On that date, a public inquiry was again rejected by the UK Government and instead they proposed allowing the PSNI to carry out a review and the Police Ombudsman to complete a report. CAJ condemned this response as a “smokescreen” and a “further insult” to the family.

Our statement went on to say: “What is the UK government trying to hide? We know Pat Finucane was murdered in front of his family. We know there were ‘shocking levels’ of state collusion with the murder, because David Cameron apologised for it. What we don’t know are the details and how far up the chain of command the collusion went. We need to know which state agent, at what level, authorised the murder and who was complicit in the thirty year cover-up. A narrowly focussed police investigation won’t find out, nor will an even more narrowly focussed Police Ombudsman process. Only a full effective public inquiry, with wide-reaching terms of reference, and powers of compellability can discover the truth. When delivering this blow to the Finucane family, Brandon Lewis spoke of truth and reconciliation, but now more than ever those words ring hollow.”

At its meeting on 3 December, the Committee of Ministers passed an interim resolution highly critical of the British Government’s failure to progress the McKerr group of cases and asked its Secretariat to look at the statement on the Finucane case with a view to reopening its examination in the New Year.

The 18 March Written Ministerial Statement referred to on the previous page was made (not purely coincidentally) on the same day the Overseas Operations (Service Personnel and Veterans) Bill was introduced into the UK Parliament. This introduces a qualified presumption against prosecution of members of the British armed forces after a five year period following any deployment overseas. We have raised our grave concerns that the bill will facilitate a level of **impunity for the UK military** for war crimes abroad including torture and extrajudicial killings. The bill would also qualify the incorporation of the ECHR in UK law, in conflict with the GFA. The Ministerial Statement set out that the change as regards the UK position on the SHA was to “ensure equal treatment of Northern Ireland veterans and those who served overseas.” We produced a briefing note on the Northern Ireland implications of the Bill and, as part of the Model Bill Team, gave written evidence to the Joint Parliamentary Committee on Human Rights which was considering the legislation. It published a highly critical report on the draft Bill at the end of October and recommended the deletion of large elements.

We have continued casework on the **individual cases** where we represent next of kin in legacy cases including preparation for the long awaited inquest in the Paul Thompson case. In the Patrick Shanaghan case, which is one of the cases still under the supervision of the Committee of Ministers, we are awaiting publication of the report of the Police Ombudsman. All pending reports into legacy cases had been delayed as result of a judicial review of the findings of the Ombudsman in the Loughinisland Massacre. On 18 June this year, the 26th anniversary of the massacre, the Court of Appeal of Northern Ireland formally issued its judgment dismissing the appeal. This found that while the Ombudsman did exceed his powers in three paragraphs, it was appropriate for the Police Ombudsman to “acknowledge that the matters uncovered by him were very largely what the families claimed constituted collusive behaviour.” There have subsequently been calls to provide greater clarification and strength to the powers of the Police Ombudsman and we continue to seek release of the report.

There have also been developments in the “**Hooded Men**” case, in which CAJ represents the daughter of Sean McKenna. Sean was one of the 14 hooded men and, sadly, later died from the results of the torture inflicted on him and other internees in 1971. In September of last year, the NI Court of Appeal dismissed an appeal by the PSNI against a previous ruling from the High Court that detectives should revisit a decision to end their investigation into those who may have perpetrated or authorised the torture. The court emphasised that the treatment to which the men were subjected to “would if it occurred today be properly characterised as torture.” They also said that the Chief Constable had created a “legitimate expectation” by promising a criminal investigation, though any investigation by the PSNI would be unlikely “to engender public confidence.” The PSNI has appealed this decision to the Supreme Court and proceedings are listed for June 2021. We will cross-appeal on a number of grounds.

We have been seeking full disclosure, under Freedom of Information legislation, of the historic **Walker Report** into the organisation of RUC Special Branch. We received the body of the report but with some redactions based on a claim for ‘national security’ exemption under the Freedom of Information Act, which we challenged. Proceedings in our case were delayed while the Upper Tier Information Tribunal heard two other cases raising similar points of law. In the light of these judgements, we have decided not to pursue the matter.

The deployment of covert human intelligence sources (CHIS) – agents and informants – and other undercover

operations, is a matter which brings together past and present. On the one hand, the conflict here saw some of the worst excesses in the use and misuse of covert agents by police and other agencies. On the other hand, police and security and intelligence agencies of various kinds continue to want to use CHIS and other undercover means to gather intelligence and, only occasionally, evidence to support prosecutions. They firmly believe that requires authorising agents to engage in criminality.

This is the subject of the “Third Direction” case in which we are parties together with Reprieve, Privacy International and the Pat Finucane Centre. For the past couple of years we have been seeking disclosure of the MI5 policy on **authorising criminality** by their agents. A heavily redacted version that was released, revealed that “authorisations” would not give a licence for criminality but would be used as evidence to convince the prosecution service that prosecution would not be in the public interest. There was therefore limited, at best, statutory authorisation for the practice.

On 20 December last year, a five-member panel of the Investigatory Powers Tribunal published its open judgment (some of the hearings were in secret). In an unprecedented split ruling by a bare majority of three to two it found MI5’s policy was lawful and could remain secret. The two minority judges published exceptionally strong dissenting opinions, with one judge warning that the Government’s claimed basis for the policy amounts to a “dangerous precedent”, and another noting the court had been asked to accept “fanciful” and “extraordinary” propositions. We appealed the finding to the Court of Appeal. This is scheduled for the end of January.

The UK Government clearly believed they could lose the appeal and on 24th September this year, they introduced the **CHIS (Criminal Conduct) Bill** and fast-tracked it through the Commons. The Bill would amend Part II of the Regulation of Investigatory Powers Act 2000

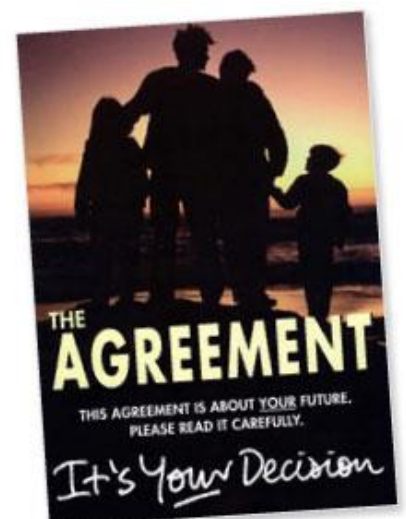
(RIPA) to create a new process of “Criminal Conduct Authorisations.” The authorisations would constitute an express power for MI5, police forces, and a range of other public authorities to authorise their agents and informants to commit criminal offences.

It is our view that CHIS activities should be regulated by statute, but this Bill places no express limits on the types of crimes which can be authorised, fails to exclude the use of children as CHIS and permits the use of these powers abroad. There is no prohibition on authorising crimes that would constitute human rights violations, including murder, torture (e.g. punishment shootings), kidnap or sexual offences, or on conduct that would interfere with the course of justice. Authorised criminal offences committed by CHIS would be rendered “lawful for all purposes.” This would bypass the independent decision-making of prosecutors as to whether the prosecution of a CHIS is in the public interest. This, in particular, would roll back key reforms of the Northern Ireland peace process.

We drafted a briefing that went to the Commons for the Second Reading and gave evidence to the parliamentary Joint Committee on Human Rights. The Joint Committee fully vindicated our position raising serious concerns and recommending that the Bill be amended to: prevent the authorisation of acts that constitute human rights violations, be restricted to less serious crimes, exclude children, be limited to national security and police agencies and provide for effective oversight. The Bill is currently in the Lords.

DEFENDING HUMAN RIGHTS AND THE PEACE PROCESS

The UK left the European Union on 31st January 2020. However, the whole of this year has been the “transition period” and there has still been no deal in the negotiations about the future relationship between the UK and the EU. The earlier part of this year saw something of a reduction in the frenetic pace of debate around Brexit since there was widespread acceptance that the Ireland/Northern Ireland Protocol, agreed last year, at least protected against a hard border on the island. There were, however, many unresolved economic, trade and rights issues and these were being worked through.



In February, for example, we participated in a roundtable on **employment rights** in Northern Ireland (employment law being devolved here) post-Brexit. We also had meetings with the Human Rights Commission and the Equality Commission about their anticipated role in the “dedicated mechanisms” to prevent any diminution in rights and equality protections due to Brexit as set out in the Protocol. We worked locally with the Brexit and Human Rights Working Group run by the Human Rights Consortium and, at a UK level, with the Brexit Civil Society Alliance. We have also participated in the Ad Hoc Group for North-South East-West Cooperation set up by the Centre for Cross-Border Studies and the All-island Human Rights Group convened by the Social Change Initiative. We published a briefing on outstanding issues around access to EU and human rights in the NI context.

This process was thrown into confusion in early September by the publication of the **Internal Market Bill**. This purported to regulate the UK “internal market” by, amongst other things, banning “discrimination” between the regions of the UK in relation to standards imposed on the production of goods and the delivery of services. Those provisions limit the autonomy of devolved regions and are accompanied by a power grab by central government in taking powers to determine the nature and extent of state aid in the regions. However, the major shock was the British Government giving itself power to amend unilaterally, by regulation, the Protocol in respect of NI-GB trade in areas that were explicitly to be decided by agreement with the EU. An amendment put in by the UK Government itself, limited any such regulations from any legal challenge, including through the Human Rights Act. The Secretary of State, Brandon Lewis, admitted in Parliament that the provisions would “break [international law](#) in a specific and limited way.”

The threat to breach international law and the treaty agreed just nine months before, threw the negotiation process on the future relationship into crisis and catastrophically further weakened faith in the British Government’s commitment to the rule of law. The Irish government has stated unequivocally that EU states will block any trade deal if the Bill in its original form is passed. The Bill is currently in the Lords and will be heavily amended. CAJ has worked with colleagues throughout the UK and Ireland to brief and propose amendments to the Bill. In respect of the clauses breaking the Protocol, the only amendment that will serve the purpose is their deletion. There is also concern that the internal market regulation aspects could threaten Northern Ireland’s ability to follow the development of the EU equality provisions listed in the Protocol.

The NI Human Rights Commission, the Equality Commission and the Irish Human Rights and Equality Commission have all said that this bill represents both a breach of international law and the Good Friday Agreement (GFA). They specifically argued that the diminution of any challenge under the Human Rights Act contradicted the GFA commitment to fully incorporate the European Convention on Human Rights into domestic law and the promise of “no diminution” of rights contained in the Protocol.

This egregious behaviour by the Government comes as it also takes measures to restrict judicial oversight of government actions. Following a commitment in the Conservative Party 2019 Manifesto the **Independent Review of Administrative Law** (IRAL) was set up by the British Government “to consider options for reform to the process of Judicial Review”. The terms of its initial consultation make it clear that the intention is to make it more difficult to take judicial reviews against the government and to restrict the areas where it is possible.

In our response to this consultation, we said: “It would be remiss not to note that the IRAL is being taken forward against the backdrop of attacks on lawyers from the most senior levels of Government, namely the Prime Minister and Home Secretary. This has been articulated in terms that both explicitly encompass political discrimination (‘leftist’ lawyers) but also create a climate of hostility towards the legal profession that has had lethal consequences in Northern Ireland in the past. This, together with attacks on the ‘vexatious’ prosecutions of historic offences in Northern Ireland, fundamentally undermines the constitutional principles of the rule of law and the separation of powers: key cornerstones of a democratic society.”

The attack on human rights and the rule of law itself manifested in this development, the renegeing on the Stormont House Agreement, the Overseas Operations (Service Personnel) Bill, the Internal Market Bill, the CHIS (Criminal Conduct) Bill and the undermining of the incorporation of the ECHR in domestic law, is serious and is moving from threat to implementation. We will have to be extra vigilant in the year to come.

AGAINST RACISM AND ALL PREJUDICE



The police killing of George Floyd led to further protests from the **Black Lives Matter movement** in the United States that spread around the world in early Summer. We have dealt with the question of the policing of the protests above. However, the protests did expose the problematic nature of some of the responses worldwide. Some people purported to be against racism but went on to say, “All Lives Matter.” In our view, by posing a general statement against what is a complaint of the most egregious discrimination – the disproportionate and widely tolerated killing of black people by US law enforcement – the response denies any inequality, implicitly accuses the campaigners of creating a hierarchy of victims and supports the status quo. Anyone who seeks to suppress or obfuscate a cry of protest on behalf of a victimised group by specious reference to apparently universal values is being racist themselves.

Again, trying to compare the significance or seriousness of one form of racism against another is itself racist. There is no hierarchy of racism, or other prejudice. Of course, specific forms have specific characteristics, and it is fine to analyse those so as to better combat the prejudice, but all involve hatred and discrimination based on irrelevant characteristics. So, for example, anti-black racism is mainly based on the world-historical crime of slavery which helped found the economic prosperity of both Western Europe and the United States. If anyone tries to pose the question as to whether that makes it better or worse than anti-Semitism, based on centuries of discrimination and the world-historical crime of the Holocaust, they are making an invidious and ultimately meaningless comparison.

Any implication that the BLM movement “ignores” other forms of racism is victim-blaming of the worst kind. Not only does it deny the specificity of their experience, but it also demands of them some general recognition of every other form of racism to the end of diminishing their own issue and blunting the strength of their protest. We will continue to support, but never try to lead, protests against all forms of racism. A practical demonstration of anti-racism is our work on the Expert Reference Group advising the **Hate Crime Review** led by Justice Marrinan. We have organised and contributed to some sectoral meetings, including with the children’s rights and women’s rights sectors. In April we concluded our submission to the review, which covers::

- ◆ Ideal of consolidated legislation with safeguards;
- ◆ Revised formulation for incitement to hatred offences;
- ◆ Revised aggravated offences model and related offences such as harassment;
- ◆ Addition of protected grounds including gender;
- ◆ Online offences and proposed statutory duty on public sector to remove hate expression in public space.

As part of continuing debate and in collaboration with the Women’s Policy Group, we requested more information from both the NI Human Rights Commission and the Equality Commission for NI regarding their decision to recommend that a gender based hate crime should specifically include men and boys as victims. We requested to know what evidence base they had to justify the conclusion that men and boys are victims of *gender based* hate crime (meaning men and boys who are targeted based on an ideology of hatred of men and boys). Neither commission was able to provide any evidence to support their conclusion, instead referring to “anecdotal evidence”.

This issue is significant, as the inclusion of men and boys in gender based hate crime (without an evidence base) risks undermining the purpose of hate crime legislation. This also points to the inherent problems with using the test of “vulnerability” rather than “an ideology of hatred” to justify a protected category. The Report is due to be published in December.

FORWARD AND BACK AT THE ASSEMBLY



In January, the devolved institutions were re-established on the basis of a detailed document, agreed by the parties and the two governments, called **New Decade New Approach** (NDNA). This included detailed commitments on the Programme for Government, changes to the institutions to increase transparency, fairness and equality, a new Sub-Committee of the Assembly on a Bill of Rights for Northern Ireland, a Brexit Committee to examine its implications for North-South and East-West relationships and commitments by the British and Irish Governments. The document also included an agreement to set up a framework “both recognising and celebrating Northern Ireland’s diversity of identities and culture and accommodating cultural difference”.

There were several components to this framework, including the establishment of:

- ◆ A new Office of Identity and Cultural Expression;
- ◆ An Irish Language Commissioner;
- ◆ A Commissioner on Ulster Scots / Ulster British language, arts and literature;
- ◆ A central translation hub for the public sector; and
- ◆ Simultaneous translation in Irish and Ulster Scots for the Assembly.

This still does not fulfil the commitments made in the St Andrews Agreement to an Irish Language Act but is progress in the right direction. We produced two briefings on NDNA proposals, the latter focusing on the draft legislation for the language Commissioners.

It is welcome that NDNA follows in some particulars the “Manifesto for a Rights Based Return to Power Sharing” published by the Equality Coalition last year. We had campaigned actively around this manifesto and our arguments were generally well-received. Of course, some of the commitments in the NDNA have already fallen by the wayside – the UK promise to implement the Stormont House Agreement has already been broken and the Brexit committee never became operational. Nonetheless, we regarded the document as a move forward.

In the context of this and the other changes to the environment we have recorded, CAJ has established a new project with funding from the Paul Hamlyn Foundation. Called, “**Never Again: Human Rights for a New Decade,**” the project will focus on monitoring the implementation of commitments in NDNA, in the Protocol and in other areas and will create a “grid” of proposed rights protections, mainly social, economic and environmental and based on international standards, that will be used as both an advocacy tool and a measure against which to monitor progress.

The “new” Executive has had a baptism of fire in having to manage the impact and response to the Coronavirus. Without prejudice to our views on individual decisions, on the whole the Executive worked relatively well, in spite of some early tensions between “following” England or the South in the nature and extent of social restrictions. However, in the course of deliberations on whether to extend restrictions beyond 13th November, the DUP twice used the “**St Andrews’ Veto**” to prevent measures recommended by the Health Minister going forward.

Under section 28A(8) of the Northern Ireland Act – and in the Ministerial Code (para 2.12), when the NI Executive has to take a decision, three of the Ministers can require the vote to be taken on a cross community basis. So, if that is invoked, the majority of unionists or nationalists on the Executive can effectively veto any decision (and as the DUP are 3 of the 4 unionists they can veto things on their own – as can Sinn Fein; Alliance ‘other’ votes count

for nothing). This was not in the Good Friday Agreement but was added at St Andrews alongside a significant expansion in the remit of the NI Executive itself to deal with many matters deemed ‘significant or controversial’ that would previously have been the purview of individual ministers. Previously the Executive only dealt with “cross cutting” decisions that cut across the remits of more than one minister.

In fact, the Assembly passed legislation earlier in the year limiting the application of this veto by limiting the range of “cross cutting” decisions that the Executive had to take, excluding planning matters, and significantly limiting the interpretation of what is considered “cross cutting.” This still leaves the veto intact when it comes to matters that are deemed “significant and controversial.” If, of course, a Bill of Rights had been passed, as envisaged by the GFA, decisions to use the veto would be subject to its provisions. So, for example, it might well be held that the DUP decision to veto restrictions designed to reduce health risk was contrary to the right to health, were that to be in a Bill of Rights. With the Equality Coalition, we have produced a briefing on these matters.

The campaign for a **Bill of Rights for Northern Ireland**, as provided for in the Good Friday Agreement, received a fillip with the establishment of the Ad Hoc Committee on a Bill of Rights by the Assembly. While the Bill of Rights should be Westminster legislation, a positive report, due in 2022, from a Stormont committee would be helpful in convincing the UK Government to carry out its responsibilities.

Both the Equality Coalition and CAJ have given written and oral evidence to the Committee. The Equality Coalition focused on the many ways in which a Bill of Rights could have avoided difficulties which have made devolution a stop-go affair. To complement that, the CAJ evidence focused on developing a rights based approach to the perilous future that faces us which should be formalised in a justiciable Bill of Rights. We have also worked with the Bill of Rights Working Group set up by the Human Rights Consortium and a range of stakeholders across the island in promoting the continuing vital relevance of a Bill of Rights.

In these discussions, and in the light of the need to overhaul the health service to deliver better results to our people, we have placed additional emphasis on social and economic rights. We have debunked the scare stories about judges taking over responsibility from politicians and have carefully explained the concept of “progressive realisation” of such rights. In that context, we are pleased to be part of the London School of Economics-based Gender, Security and Justice Hub, with colleagues from Ulster University, in which we are specialising in the role of social and economic rights in societies transitioning from conflict. We are contributing papers, blogs, interviews and an analysis of the Equality Coalition to this work.

A FAIR, HUMANE IMMIGRATION SYSTEM



The Immigration project continues to conduct strategic legal research, build networks across the UK and Ireland and undertake direct actions to impact policy and practice. The move towards online meetings and events, caused by health restrictions, has meant that the immigration project has had the opportunity to expand its networks and build new relationships across the UK and Ireland. The project co-ordinator was appointed chair of the NI Immigration Practitioners Group which was an endorsement of the work of the project and provides a strong link with local practitioners and their clients.

There has been an unprecedented demand for **expert advice** and comment from the project. Our co-ordinator has spoken at numerous conferences and events and conducted training webinars on NI specific immigration issues. This has tied in with the project’s role in providing expert legal advice to NGOs, politicians and other organisations working in immigration which has really expanded during this period. Through webinars and online meetings, the project has expanded this capacity, as well as providing frequent advice and guidance by email and telephone and

producing briefs and guidance on various subjects which are distributed widely.

A main area of work has been around **Irish citizens' EU rights** after Brexit. The project recorded a significant positive impact with the announcement of a statement of changes to the immigration rules on the 14th May 2020. These changes amend Appendix EU of the immigration rules to allow family members of a "relevant person of Northern Ireland" to apply to the EU Settlement Scheme. Significantly a "relevant person of Northern Ireland" includes a person who is Irish or British or a dual Irish and British national born in Northern Ireland. The changes came into effect from the 24th August and the project has undertaken significant work to promote awareness and understanding of the changes. This is particularly important to protect the right of such persons to bring their non-UK/EU spouses to live with them in the UK. These changes represented a significant victory for Emma and Jake DeSouza who had taken a legal challenge against the Home Office refusal to recognise Irish citizens EU family reunification rights. They also open up questions of the diminution of rights once the Settlement Scheme ends on the 31 June 2021.

Throughout the year, the project has campaigned for legislation and policy on "**frontier workers**" after Brexit. This is not a major issue for Britain but is very significant for Northern Ireland. The legislation creating a frontier workers scheme was finalised in November 2020 without public consultation or impact assessment. CAJ joined with organisations from across the island of Ireland in sending a joint letter to the Secretary of State for the Home Department raising urgent concerns about the scheme and its impact in Northern Ireland.

The project has now completed its first **joint research project** which has been developed in collaboration with the Migrant Centre NI and other frontline NGOs. The report provides an insight into the work of a frontline advice service and is a snapshot of the significant issues and impacts being faced by the migrant community in Northern Ireland. The report will be an extremely valuable resource to the project creating a rich database of experience which can inform and lead the project going forward.

The project has continued to work on urgent matters arising from the **Coronavirus pandemic** including supporting the calls for ending the category of "No Recourse to Public Funds" and addressing issues for EU nationals accessing Universal Credit. We received confirmation on access to healthcare for migrants from the Minister for Health, with a statement that no data or information would be passed on to Immigration Enforcement when a migrant accessed healthcare due to coronavirus, and we have built good working relationships with the Department of Health and organisations such as the Business Services Organisation, who have provided us with detailed information on the conduct of migrant data sharing and issues such as quarantine.

The project has fed into the wider work of CAJ in response to the policing of the Black Lives Matter protests, with a particular focus on the **immigration impacts** for those who interacted with the PSNI. The project also undertakes work to tackle the impact of the hostile environment and the systematic racism inherent in this such as assisting grassroots organisations in ensuring access to legal advice for detainees and monitoring the ongoing detention and movement of detainees during lockdown and challenging racist immigration checks occurring within the Common Travel Area. The project has also worked extensively with local practitioners on legal aid and tribunal practice changes which are raising an access to justice issue.

A focus of the project's work has also been the Coronavirus passenger quarantine regulations, the functioning of these within the Common Travel Area and the enforcement of same, with particular concerns raised on the involvement of Border Force in this role. This issue has gained significant attention including from the media.

We believe that this project has truly come of age in the past year. We quote from the evaluator's most recent report:

"it is evident that despite the virus and working-from-home, the project has sustained, even increased its level of activity. The core task of providing briefings is very much in evidence and their quality has been unchallenged. The work in coalition building is especially impressive, the project covering all bases as it were, bringing the project and its issues to the widest possible range of supporters and potential supporters. A sure indicator is the rising level of demand for presentations, formal, verbal, or informal, including repeat ones. The current balance of work and activity is one likely to lead to the best range of results."

EQUALITY



We have said many times that equality is a foundation of the very concept of human rights. All humans are equal in dignity and in the rights that attach to them by the simple condition of being human – the whole structure of human rights and the rule of law only makes sense in the light of that understanding. Specific equality issues are therefore a fundamental part of CAJ’s work.

The **Equality Coalition** is a particularly important collaboration for CAJ. Co-convening the grouping with UNISON makes a mutually productive alliance between the trade union movement and those promoting human rights. Bringing in almost 100 organisations working on aspects of equality gives it engagement with many groups of vulnerable and discriminated-against people together with the heft to undertake productive lobbying. CAJ’s job is to share the organising work, to contribute legal analysis and a strategic overview and, crucially, to hear and take on board the experience and insight of Coalition members. There have been eight meetings this year covering a variety of issues. Remote working has actually allowed increased participation with upwards of 30 groups typically participating in each meeting. Through the Equality Coalition, we are also active in the Women’s Policy Group, the Women’s Budget Group and the Childcare for All Working Group. CAJ staff and Coalition members contributed to the Feminist Recovery Plan developed by the Women’s Policy Group.

The Coalition has also begun to regularly set up temporary sub-groups to allow member organisations to explore topics together in greater depth. This has included a sub-group on the Domestic Abuse and Family Proceedings Bill and an Education Sub-Group which met the Stormont Education Committee and produced a briefing on ‘Equality proofing the return to school’.

The launch of the report *Sectarianism: The Key Facts*, which the Coalition commissioned from Dr Robbie McVeigh, took place 17 Feb 2020 in Stormont, with Mike Nesbitt MLA and Colin McGrath MLA acting as co-sponsors. This was the only ‘off-line’ event that the Coalition was able to hold during the year due to the impact of the pandemic. The launch had a high number of attendees and a strong media presence on the day. Junior Minister Declan Kearney spoke at the event alongside the sponsors, Dr Robbie McVeigh and representatives of CAJ / UNISON. There was also a panel discussion with various Equality Coalition members speaking about how sectarianism impacts their sectors. The event received wide media coverage and demand for Dr McVeigh’s report was so high that the Coalition had to cease supplying people with hard copies and ask them to download the digital version instead.

In the summer, the Equality Coalition formed a partnership with the Transitional Justice Institute at Ulster University and the Human Rights Consortium to hold a series of webinars designed to start important conversations about the human rights implications of the pandemic for people in Northern Ireland. There will have been nine of these ‘Covid Conversations’ webinars by the end of the year. Each webinar examines a rights or equality issue that has been brought into sharper focus by the pandemic. Attendance has varied from a minimum of around 30 to as many as 70. While no webinars have been scheduled for next year as of yet, it is anticipated that more will be held then. Additionally, the webinars that have already taken place have all been recorded with the intention that they will be made into individual podcasts.

We engaged in a number of interventions with other Coalition members and have been in contact with Stella Creasy MP in relation to legal certainty and the process of commissioning the abortion services required by the new NI regulations. The Department of Health has stalled commissioning actual services, raising issues of ECHR compliance regarding legal certainty and Article 8 rights. We used Freedom of Information to acquire Department documentation on commissioning of services but have been met with delay and denial. The matter is now with the Information Commissioner’s Office.

This has been the last full year of the **Equality Duty Enforcement Project (EDEP)**, which from October, has also started to engage in the “Never Again” monitoring and advocacy project mentioned earlier. The “Never Again” project will incorporate some elements of the EDEP, including taking forward strategic Section 75 complaints. This year, the EDEP continued to build upon the work done in previous years in terms of growing the capacity of equality coalition members to utilise Section 75 and encouraging the use of Section 75 as an enforcement mechanism. Much of the work done this year focused on issues around the Irish language, welfare, housing, budgets and investment, and hate expression. We also continued our efforts in encouraging the Equality Commission to strengthen their enforcement powers.

The Ulster University student union voted and passed a motion to introduce **English/Irish bilingual signage** in the Student

Union and the rest of campus in 2018. The equality screening of this policy found several “major” and “minor” adverse impacts primarily on the basis of a perception that the Irish language constitutes a “chill factor” on good relations for Unionist students, and subsequently decided to proceed to an EQIA. We filed a breach of equality scheme complaint to the University. They responded to our complaint, by saying that while the University acknowledges that promotion of the Irish language should not constitute discrimination against unionist students, a group of these students *perceive* discrimination, and so an EQIA is appropriate. This complaint is important because if perceptions of discrimination (particularly if based on equality measures to combat historical oppression) are treated as seriously as actual discrimination, it risks up-ending equality processes. In August 2020 we submitted a formal complaint to the Equality Commission and are still waiting to hear whether they will investigate.

We continued our assistance to the homeowner in the Antrim and Newtownabbey Council area who was threatened by the Council with prosecution and a fine for putting up a **small sign in Irish** outside of her home. We progressed the complaint through all the Council’s internal processes and assisted the complainant with submitting a complaint to the Public Services Ombudsman’s office in May 2020.

As the Equality Coalition we held several meetings with the **Communities Minister** to seek progress on a range of issues, including strategic housing policy, minority language rights, social security mitigations and fraud detection, and others. We also raised the existence of “interviews under caution” in relation to people accused of benefit fraud, the issue of which emerged through the EDEP project. The Minister committed to reviewing the letter sent out to people accused of benefit fraud which is ostensibly “inviting” them to a voluntary interview under caution, but contains no mention of the meeting as voluntary and instead tells people that they will potentially be arrested for failing to show up. Of course, there is no crime committed here and the Minister has said the letter will be reviewed and rewritten. This is a significant success for the project.

We pressed the Northern Ireland Housing Executive (NIHE) on their practice of collecting **residual rent arrears** that occur as a result of the (very common) delay in universal credit rent payments between the Department for Communities and social housing landlords. We were told that NIHE has been collecting these rent arrears directly from tenants (even deducting them from Universal Credit payments). NIHE subsequently worked with the Department to modify the payment schedule so that now payments are made from the Department to NIHE every day, rather than once a month. This means that the residual rent arrears will not occur anymore. This is a big success of the project and helps to illustrate the effectiveness of equality screening as a method of scrutinising and highlighting problematic policies. Our requests to see the equality screening of this policy led NIHE to work quickly to address the cause of the residual rent arrears.

In 2019, the Department for Communities decided to change the definition of ‘**affordable housing**’ to expand options for intermediate housing. A concern was that this focus on intermediate housing would deprioritize social housing. In collaboration with PPR, CAJ put a breach of equality scheme complaint into ECNI. to not to proceed with an EQIA on the definition of ‘affordable housing’. This complaint also tested whether ECNI would be flexible enough to accept a formal complaint on the back of a screening decision review request submitted to the public authority, when all the elements of a breach of scheme complaint were included. The complaint was rejected by ECNI on this basis that there had not been a prior formal complaint to the Department for Communities. The project then met with the Minister for Communities to brief her both orally and with a document on the need for affordable housing to be redefined around those most needy. The Minister responded by launching a consultation *Further stakeholder engagement briefing paper* with an updated definition of affordable housing. There was official acceptance, in principle, that social housing will not be negatively affected by resources instead put into intermediate housing. The next challenge is to test the practical implications and outcomes.

Last year a complaint to the Public Services Ombudsman reached a resolution by the Equality Commission agreeing to entirely review and revise its **Investigation Procedure** over equality scheme breaches. The ECNI consulted and published a new Investigation and Complaints Procedure early in 2020. In general, it is a big improvement from the draft procedure prior to the consultation, and our consultation submission. Many of the issues raised by the project were addressed (and the ECNI informed us that our response was very significant in the consultation process). The ECNI has introduced timeframes into their process (with the notable exception of an explicit timeframe on the actual investigation) and has clarified the factors involved in deciding not to investigate a complaint. In late December 2019, the ECNI published the result of their investigation into our complaint against the Department of Infrastructure’s pilot scheme of introducing taxis into bus lanes, and essentially upheld our complaints.

Despite this progress, the lack of pro-active enforcement by the ECNI remains the project's biggest hurdle and probably has been the least successful element of the project. The ECNI has not fundamentally shifted from the mentality that their focus should be providing advice and guidance to public authorities rather than enforcement through investigations and complaints. The time it takes for the ECNI to decide whether to investigate a complaint is still unreasonably long (for example, at the time of writing this, the ECNI has yet to decide whether to investigate a complaint which was submitted in March 2020) and the reasons provided for not investigating a complaint are problematic. We are currently compiling an end of project report, and a significant aspect of it will be following up on recommendations made to ECNI in the *Equal to the task?* Report.

Based on research collected over the past year, we have drafted a comprehensive report on the powers afforded to public authorities to intervene to remove **public hate expression** (or items that constitute hate expression based on the context in which they are placed) and the exercise of their powers. Overwhelmingly, we see that public authorities have few formal policies to guide the exercise of their powers to remove hate expression and it is common for public authorities to claim a lack of responsibility for the removal of hate expression. There are also differences between the type of hate expression, for example there are policies governing the removal of 'offensive' graffiti, but a significant lack of policies around the removal of flags which constitute hate expression. We also see a contrast between quick intervention in the removal of public items that are not hate expression (i.e. parent teacher meeting flyers, car boot sale flyers) and the delay and lack of action to remove hate expression, particularly if it is put up by paramilitaries or with their support. The report is being finalised now and will be formally launched soon.

We have met with the **Strategic Investment Board** to progress their commitment to work with the Equality Coalition on screening of the Investment Strategy for Northern Ireland (ISNI). This is a ten-year document that sets the priorities for investment spending; the last strategy allocated over £14.8 billion of investment money. On the back of our meeting in April 2020, SIB committed to equality screening the new ISNI. We have since followed up with SIB, and they have agreed to receive evidence of need from Equality Coalition members and to meet with the Equality Coalition prior to formalising the ISNI draft. The Equality Coalition has an opportunity to provide evidence of need of Section 75 groups and recommendations for capital funding to improve this need, as well as to eventually feed into the equality screening and public consultation process for the overall Investment Strategy. Helping to shape the prioritisation of the ISNI is a significant opportunity to influence the spend of billions of pounds of capital funding over the next ten years.

Following our series of screening decision review requests and equality scheme complaints to every Department regarding their failure to properly screen their 2019 budgets, in October 2019 the Equality Commission took a paragraph 11 'own initiative' investigation against the Department of Finance (to put this into context, including this investigation, ECNI has only taken five paragraph 11 investigations in the last ten years) and determined that the Department had failed to properly equality screen and consult on their budget. This will hopefully have a significant impact on the transparency and level of attention put into equality screening future budgets.

In collaboration with Equality Coalition members, EDEP challenged the policy issued by the Northern Ireland office (NIO) in November 2019, *Provision of a new legal framework for **accessing abortion services*** because the decision therein to proceed to an Equality Impact Assessment (EQIA) was made on an erroneous 'good relations' basis. Accordingly, we formally requested a screening decision review request (11th December 2019). The NIO subsequently withdrew its decision to proceed with an EQIA. CAJ worked with the Women's Policy Group (WPG) and others on delays in the introduction of abortion services, including the use of FOI to obtain ministerial-level documentation and information from one of the health and social care boards on its commissioning of services. We submitted a formal complaint to the Information Commissioner's Office regarding persistent delays by the Department of Health to provide us with easily accessible information on the decision by the Minister to refer the matter of early medical abortions to the Executive.

We have worked on **advising many organisations** during the year. For example, we helped Transgender NI write a complaint against the Department of Health in relation to the screening of the Mental Health Action Plan, which will soon be submitted as formal complaint to the ECNI. Following a request from a number of organisations working with victims of the conflict, we submitted a review request to the NIO regarding their failure to properly screen the Victims' Payments Regulations, particularly the guidance around eligibility for the scheme. In our view, the screening contained a number of fundamental technical and evidence errors. We have been very active in the Women's Policy Group and in the spring we shared the Hawaii COVID-19 Feminist Economic Recovery Plan with the group, which became the inspiration for the Northern Ireland COVID-19 Feminist Recovery Plan. We also organized several consultation response working groups, regarding the domestic violence legislation and the hate crime legislation review, to help organizations share information and discuss formal responses.

INTERNATIONAL SOLIDARITY



Because of the pandemic, we have not benefitted this year from the usual flow of international delegations who visit to understand Northern Ireland's experience of peace building and human rights. However, before the pandemic we attended some events, we have had virtual meetings and maintained our connection with the International Federation for Human Rights (FIDH).

CAJ is a junior partner in the Socio-Economic Rights and Transition Project, with Rory O'Connell, TJI, UU, which is part of the **Gender, Justice and Security Hub** led from within the London School of Economics (LSE). Our project is being carried out under the Hub's Transformation and Empowerment research stream. The project will focus on how socio-economic rights are dealt with in peace agreements.

In January, this international project had an initial Convention in Sri Lanka, which CAJ attended (see photo above). The purpose of the Sri Lankan Convention was to bring together the various partners involved in the Hub for a process of knowledge exchange, networking and training. Representatives attended from across the world, including conflict-affected regions such as Lebanon, Northern Ireland, Iraq (including the Kurdistan region), Colombia, and Uganda. Activists from Sri Lanka also participated when it was safe to do so given the current political context in the country.

Also in January, we attended the first of a series of **Spanish-Catalan seminars** in Barcelona, designed to explore issues around the crisis in relations between the autonomous region and the central state. It was organised by a number of NGOs from Catalonia and Spain. We presented on "Lessons from a post-conflict society for a pre-conflict society" which focused on the peace process and threats from Brexit.

Early in March, we did receive a **delegation from Abkhazia**, mainly from their Ombudsman's office. Abkhazia is a *de facto* state in the north west of the state boundaries of Georgia, that is recognised by Russia and a handful of other states, and is divided between the majority Abkhazia community and a Georgian minority. We discussed the patterns of human rights abuses that led to and took place during the NI conflict and the post GFA reforms to address them. These included justice, policing, dealing with an ethnically divided society, power sharing, minority language rights and legacy of the conflict.

In April, we met (virtually) with a consultant working for the Council of Europe on a support project in relation to the **State Inspector of Georgia**, a new independent 'Police Ombudsman' type institution with competence over complaints relating to torture and ill treatment. This follows up a presentation we gave to a Ministerial roundtable in Tbilisi in 2016 on the model of the Police Ombudsman, as part of an Open Society project. The establishment of the State Inspector office significantly progresses this initiative.

In August we spoke at a webinar: "**Palestine to Venezuela via Ireland**: updates on legal struggles for justice," organised by the London Learning Cooperative.

We continued working as we could with **FIDH**, which is one of the largest and most influential gatherings of human rights organisations. We joined a FIDH virtual meeting in June designed to exchange views on migration and how FIDH's thematic priorities should be shaped. The meeting determined on closer and more long term collaboration.

We signed a letter of support to Nabeel Rajab, Director of the Bahrain Center for Human Rights, and Deputy Secretary General of FIDH upon his release from prison. We supported a FIDH statement on the right to protest and condemning violent repression of BLM protests in the USA. We also co-signed a letter to the United Nations Human Rights Council requesting the convening of a Special Session on the Escalating Situation of Police Violence and Repression of Protests in the United States led by ACLU and USHRN. CAJ endorsed FIDH statements to the United Nations High Commissioner for Human Rights on the current COVID-19 outbreak and its implications for human rights around the world. We also joined the FIDH Western Europe Communication platform as a member.

FINANCE

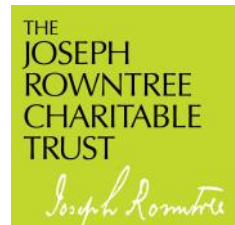
CAJ is supported by the Human Rights Fund – a dedicated fund managed by the Community Foundation for Northern Ireland, designed to support CAJ and the three other organisations in the Human Rights Partnership (the Human Rights Consortium, Participation and the Practice of Rights, and Public Interest Litigation Support). We have actively worked on fund development this year and the Fund has met its fundraising targets.

CAJ also has to raise almost half of its income from other sources such as charitable foundations. We are very grateful for the support of:

Joseph Rowntree Charitable Trust
UNISON General Political Fund
Paul Schurgot Foundation
Open Society Justice Initiative
The Baring Foundation
Community Foundation for Northern Ireland
New Philanthropy Capital Transition Advice Fund
Legal Education Foundation
Paul Hamlyn Foundation

CAJ has also raised funds through Local Giving and would like to thank all those who have made a donation. You can find our Local Giving page here: www.localgiving.org/charity/caj/

A full set of audited accounts is available to members on request.



STAFFING

In March, Paula Gourley joined us as Finance and Office Manager. Although for most of her time we have all been working from home, Paula has already made a major contribution in keeping the financial and administrative ship afloat in difficult times. We are very pleased to welcome her to our team and look forward to working with her in the times to come.



THE CAJ STAFF TEAM

Brian Gormally, **Director** (brian@caj.org.uk)
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Una Boyd, **Immigration Project Coordinator** (una@caj.org.uk)
Eliza Browning, **Human Rights Project Coordinator** (eliza@caj.org.uk)

THE EXECUTIVE

Anna Bryson, Chairperson	Rory O'Connell, Treasurer	Fionnuala Ni Aolain, Editor of Just News
Cathy Bollaert	Romana Khaoury	Kieran McEvoy
Dáire McGill	Ursula O'Hare	Louise Mallinder
Ciarán Ó Maoláin	Anne Smith	John Topping

COMMUNICATING DURING A PANDEMIC



The pandemic has impacted almost every aspect of our lives. How we as individuals and as a society communicate with each other is no exception.

With face to face interactions limited for most of the year, this has inevitably led to an increased reliance on digital mediums in place of the more varied options we had before.

Since March 2020, the CAJ office has been closed and the staff have adopted a 'working from home' policy. This has meant many more inter-staff emails and phone calls than before! We have also developed new ways of touching base with each other and now hold a weekly team meeting via **Zoom**. These meetings have proven invaluable, particularly with casual interactions in the office are no longer possible. CAJ as an organisation has also had to consider how we reach out to our stakeholders. As a campaigning organisation, it is important that CAJ's work is not only impeccably accurate and authoritative, but is also widely disseminated.

We have made changes to improve our **website**. A web developer was brought in during the summer to streamline the site and ensure it is operating at an optimal capacity. We have also added new content for visitors, including a section that brings together all of our work on Covid-19. Ultimately, we plan to develop a new, more cutting-edge website, but plans remain at their initial stages. Throughout the year, the CAJ website has averaged about 3,000 hits per month (similar to last year).

Our **Twitter** account, @CAJNi, continues to perform well. As of 25 November 2020, we have 4,173 followers (up 567 compared to what was reported in the annual report last year). Twitter has acted as a very useful conduit throughout this year for sharing statements and briefings from CAJ. The Equality Coalition account has also enjoyed significant growth and is nearing 1,000 followers for the first time (currently at 981).

We have continued to produce editions of **Just News**, though have switched to a digital-only format for the foreseeable future as a result of the pandemic. Three issues were produced during 2020, including a bumper edition in June 2020, which explored the pandemic through various perspectives and highlighted its impact on rights and equality in Northern Ireland. Last year, we made a decision to increase the number of external contributors to the newsletter, a focus which continued throughout 2020. The majority of articles in each issue is now written by authors from outside CAJ. This has helped us cover a wider variety of topics than we would otherwise be able to and helps ensure the newsletter is representative of wider civil society in Northern Ireland. Fionnuala Ní Aoláin, the UN Special Rapporteur for the Protection and Promotion of Human Rights while Countering Terrorism, remains in her role as Editor of Just News, in addition to regularly writing for the publication.

Just Updates, our ezine, was issued nine times during 2020. Some changes were made to the ezine mid-year to maximise the amount of information it is providing to subscribers. Each issue now includes signposting to all of CAJ's latest public outputs, including reports, press releases, and briefing papers. Opens of the ezine have remained steady at around 40 to 45% since the start of the pandemic. It will be interesting to see if this trend continues. Currently, Just Updates has 381 active subscribers. This has not increased as much as usual throughout the year as we usually use our events to recruit people to the mailing list. We may need to consider new strategies for growing the list in 2021.

In October 2020, CAJ launched **Everyone Equal**, a new campaign to promote human rights, alongside the Human Rights Consortium, PPR, and the PILS Project. As a first step, we worked with our campaign partners to produce a series of animated videos that explain some of the key rights issues currently facing Northern Ireland. These are available here: www.everyoneequal.org. It is anticipated that more material explaining human rights will follow next year.

There was a noticeable lull in CAJ's **media coverage** during the early days of the pandemic, but this did not persist throughout the year. We recorded 79 instances where CAJ was directly referenced by the press. Issues we worked on – such as opposition to the Covert Human Intelligence Sources (Criminal Conduct) Bill – received additional coverage, but we were not always named in this. CAJ staff members gave 12 TV or radio interviews. They also authored seven articles for external publications, including The Detail, Rights NI, and Northern Ireland Legal Quarterly.

We continue to make every effort to be fully compliant with **GDPR**. If you would like to find out more about how we keep data secure, please refer to our *Privacy Policy*, which is available from our website. You can also request a copy of this policy by emailing robyn@caj.org.uk.

SUBMISSIONS & PUBLICATIONS

PUBLICATIONS

Sectarianism: The Key Facts, Dec 19 (published and circulated Feb 20)

Prosecutions, Imprisonment and the Stormont House Agreement: A Critical Analysis of Proposals on Dealing with the Past in Northern Ireland, Apr 2020



SUBMISSIONS

S485 Initial thoughts on rights and the New Decade, New Approach (NDNA) agreement, Jan 20

S486 Analysis of the draft legislation published with the New Decade, New Approach document, Jan 20

S487 CAJ submission to the Committee of Ministers in relation to the supervision of cases concerning the action of the security forces in Northern Ireland, Jan 20

S488 COVID-19, Northern Ireland, and emergency law - A CAJ briefing note, Mar 2020

S489 CAJ submission to the Committee of Ministers in relation to the supervision of the cases concerning the action of the security forces in Northern Ireland, Apr 20

S490 Submission to the Independent Review of Hate Crime Legislation in Northern Ireland, Apr 20

S491 CAJ submission to UN Committee Against Torture, follow up procedure with UK, May 2020

S492 Covid-19, passenger quarantine, and the Common Travel Area (CTA): How are requirements for 14 day self-isolation intended to work in the CTA?, May 20

S493 Passenger quarantine and the Common Travel Area (CTA): The Health Protection (Coronavirus, International Travel) Regulations (Northern Ireland) 2020, June 2020

S494 The Health Protection (Coronavirus, Restrictions) (Amendment No. 4) & (Amendment No. 5) Regulations (Northern Ireland) 2020 and application to the Black Lives Matter anti-racism protests, June 2020

S495 EU-UK future relationship cliff edge: Outstanding issues around access to EU and human rights in the Northern Ireland context, Aug 2020

S496 Electronic Travel Authorisation and the Common Travel Area: How can proposals for pre-travel authorisation work on the Ireland/NI land border? Aug 2020

S497 CAJ submission to DOJ on the development of an Adult Restorative Justice Strategy for Northern Ireland, Sept 2020

S498 Equality proofing the return to school: Briefing paper from the Equality Coalition, Sept 2020

S499 (Joint) briefing for Second Reading of the Covert Human Intelligence Sources (Criminal Conduct) Bill, Oct 2020

S500 Written Evidence submitted by the members of the Stormont House Agreement Model Bill Team to the Human Rights (Joint Committee) re Overseas Operations (Service Personnel and Veterans) Bill: Key Issues re Legacy, Human Rights and Northern Ireland, Oct 2020

S501 NI changes to the EU Settlement Scheme: Updates and clarifications following scheme opening on 24 August 2020, Oct 2020

S502 The EU Settlement Scheme NI Changes: Applications by relevant persons of Northern Ireland in their own right, Oct 2020

S503 Written Evidence to the NI Assembly Ad Hoc Committee on the Bill of Rights from the Equality Coalition Co-Conveners, Oct 2020

S504 Response to Independent Review of Administrative Law Call for Evidence, Oct 2020

S505 Submission to the Committee of Ministers from the Committee on the Administration of Justice (CAJ) in relation to the supervision of the cases concerning the action of the security forces in Northern Ireland, Oct 2020

S506 (Joint) Written Evidence to the Joint Committee on Human Rights on the Covert Human Intelligence Sources (Criminal Conduct) Bill, Oct 20

S507 ICCL CAJ briefing note on Clause 109 of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2020, Nov 2020

S508 Stormont's vetoes in the context of a pandemic – An Equality Coalition briefing note, Nov 2020

S509 Evidence to Ad Hoc Committee on a Bill of Rights from CAJ, Nov 2020

S510 Affordable Housing: A CAJ briefing note, Apr 2020 (filed out of chronological sequence)

S511 The Strategic Investment Board and the Investment Strategy for Northern Ireland, Dec 2020



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