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Winner of the 1998 Council of Europe Prize

CAJ Submission to the

Victims Liaison Unit

September 1998

Submission No. S.76
Price: £2.00

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What is the Committee on the Administration of Justice (CAJ)?

CAJ is an independent non-governmental organisation which is affiliated to the International Federation of Human Rights (IFHR). CAJ monitors the human rights situation in Northern Ireland and works to ensure the highest standards in the administration of justice. We take no position on the constitutional status of Northern Ireland, seeking instead to ensure that whoever has responsibility for this jurisdiction respects and protects the rights of all. We are opposed to the use of political violence.

CAJ has since 1991 made regular submissions to the human rights organs of the United Nations and to other international and regional human rights mechanisms. These have included the Commission on Human Rights, the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, the Human Rights Committee, the Committee Against Torture, the Committee on the Rights of the Child, the Committee on the Elimination of Racial Discrimination, the Special Rapporteurs on Torture, Independence of Judges and Lawyers, and Extrajudicial, Summary and Arbitrary executions, the European Commission and Court of Human Rights and the European Committee on the Prevention of Torture.

CAJ works closely with international NGOs including Amnesty International, the Lawyers Committee for Human Rights and Human Rights Watch.

Our activities include: publication of human rights information; conducting research and holding conferences; lobbying; individual casework and legal advice. Our areas of expertise include policing, emergency laws, children's rights, gender equality, racism and discrimination.

Our membership is drawn from all sections of the community in Northern Ireland and is made up of lawyers, academics, community activists, trade unionists and other interested individuals.

CAJ was recently awarded the Council of Europe Human Rights Prize in recognition of our work in defence of rights in Northern Ireland. Previous recipients of the Council of Europe Human Rights Prize include Medecins Sans Frontieres, Raoul Wallenberg, Raul Alfonsin, Lech Walesa and the International Commission of Jurists.

Introduction

CAJ's remit, as a civil liberties group, focuses on human rights abuses carried out by the state. Therefore our perspective cannot represent a complete picture of the suffering of the victims of the conflict in Northern Ireland. However, we believe that it represents an important strand in the suffering endured by individuals and communities in Northern Ireland during the last thirty years. Since our inception in 1981, we have often worked with those bereaved as a result of action by the security forces, both police and army. We have also been approached for assistance by families whose loved ones have been killed by loyalist paramilitaries but who believe that members of the security forces colluded with their killers.

Throughout the course of the conflict some 360 individuals have been killed by the army or police, approximately eleven per cent of all conflict-related deaths. It is impossible to estimate in addition how many deaths attributed to loyalist paramilitaries were in fact wholly or partially the result of collusion between state forces and those paramilitaries. However, there appears to be credible evidence which suggests that such collusion took place and was reasonably widespread.¹ Indeed concerns about such behaviour were so widespread that at one point, the RUC asked John Stevens, the Deputy Chief Constable of Cambridgeshire to investigate allegations that members of the security forces were passing on information on individuals to members of paramilitary groups.²

Parity of Treatment

CAJ believe that the victims of state violence and their relatives must receive the same recognition of their loss as victims of paramilitary violence. While the state has successfully prosecuted many individuals accused of paramilitary killings, it is abundantly clear that, in terms of investigation and prosecution of those responsible, the response of the state to killings by the police and army has been inadequate. Despite the fact that over 360 deaths have been caused by members of the police and army on duty, there have only been 22 individuals prosecuted and only four of those

¹ See Report of the Special Rapporteur on the Independence of Judges and Lawyers on his mission to the UK (E/CN.4/1998/39/Add.4): Lawyers Committee for Human Rights, *At the Crossroads: Human Rights and the Northern Ireland Peace Process*, 1996 and *Human Rights and Legal Defence in Northern Ireland*, 1993; British Irish Rights Watch, *Alleged Collusion and the RUC*, November 1996; *Relatives for Justice, Collusion 1990-1994: Loyalist Paramilitary Murders in North of Ireland* (London/Derry: RFJ, 1995) and *Shoot-to-Kill and Collusion* (London/Derry: RFJ, July 1993); Amnesty International, *Political Killings in Northern Ireland* (London: AI, February 1994); Committee on the Administration of Justice, *Adding Insult to Injury? Allegations of Harassment and the Use of Lethal Force by the Security Forces in Northern Ireland* (Belfast: CAJ, December 1993). Members of a number of United Nations bodies, including Dr Claire Palley, the independent expert nominated by the government of the UK to the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, have also expressed concern about the UK's inadequate response to allegations of collusion.

² John Stevens was appointed to head an investigation into alleged collusion between loyalist paramilitaries and the security forces following the murder of Loughlin Maginn in August 1989. His full report was never published but as a result of the investigation, there were forty-six prosecutions and 183 convictions for separate offences although no police officers were prosecuted.

prosecutions were successful. Two of that four were released after serving in the region of three years of a life sentence. The other two, Guardsmen Fisher and Wright were recently released after serving approximately six years of their life sentences. All four were soldiers. No police officer has been convicted for a killing committed while on duty.

In many of the cases where collusion is alleged, there have been no or very few prosecutions (for example in the cases of Patrick Finucane, the Dublin/Monaghan bombings, and the murder of Patrick Shanaghan). There is also particular concern in relation to approximately forty murders committed in the mid-Ulster area between 1989 and 1994. To date there have been few prosecutions arising out of these cases and many of those bereaved believe that there is evidence to suggest police collusion in the killings and inadequate or incompetent investigations. Some of the family members also report that they have been harassed by the security forces since the murders. While inquests in some of the cases have taken place, few families fully understood their rights in relation to the hearing. In one case the inquest lasted fifteen minutes.³ Indeed such was their concern at similar allegations in 1995 that the United Nations Human Rights Committee recommended that specific efforts be made by the UK government to resolve outstanding cases.⁴

While many murders committed during the course of the conflict in Northern Ireland remain unresolved, the above suggests a pattern of impunity in cases where the state has been or is suspected of having been involved in the killing. Real or apparent inaction or disinterest on the part of those in authority to such concerns often exacerbate the feelings of loss already experienced. We believe that some means must be found to acknowledge the loss of those bereaved in these circumstances. It is incumbent upon the state to devise a means of acknowledging that human rights abuses took place. The normal mechanism for doing this would be to prosecute those involved although this need not necessarily be the method employed. We also believe that it must commit itself to disclosing details of its role in those abuses. We believe that this may provide the victims of such abuses with some sense of justice, which will help to address their pain and loss.

The Bloomfield Report

We wrote in similar terms to these to Sir Kenneth Bloomfield when he was drawing up his report. We were disappointed at the extent to which the points that we made were reflected in his conclusions. In his 60 page report, one paragraph was reserved for the victims of state violence. Furthermore, although he set out some of the views which had been communicated to him by representatives of the families of this group, he did so without personal comment, in complete contradiction to the manner in which he rightly made highly personal interventions in the case of the disappeared. For instance, he never once in his report suggested that the state should disclose and apologise for its role in the many controversial killings for which it was, or was suspected of, being responsible. However, he voiced a “fervent appeal” that those, who can provide information on the location of the almost twenty disappeared, do so.

³ Human Rights Watch/Helsinki, *To Serve Without Favor*, 1997.

⁴ Comments of the Human Rights Committee CCPR/C/79/Add.55 27 July 1995.

In failing to make a similar appeal in the case of the victims of state violence, Sir Kenneth reinforced the sense of disinterest that the state has shown these victims.

Astoundingly, in a paragraph in his report entitled, Distinctions between Categories of Victims, he does not even mention the shabby way in which victims of state violence have been treated, but concentrates on the distinctions between those from a security background who were bereaved in the early days of the conflict as opposed to in more recent times.

While his report did discuss the possibility of a truth and reconciliation commission, it did so in a relatively negative way. CAJ are not prescriptive about the way in which the state discloses the truth of its role in the very many of controversial deaths in which it was involved, but it must be done. International law is clear that the state must be held accountable for its actions and indeed is under an obligation to provide an effective remedy for those whose rights have been violated (Article 13, European Convention on Human Rights; Article 2(3), International Covenant on Civil and Political Rights).

It may be useful, when considering what other remedies are possible in this context, to have regard to the experience of other jurisdictions which have gone through periods of conflict. In many of these societies, the benefit of addressing past grievances has been recognised. Perhaps the most obvious example is the Truth and Reconciliation Commission in South Africa but there are many other less well-known models which have been used. While there are no prescriptive rules in international jurisprudence governing the establishment of such a mechanism, we would argue that a prerequisite for any such venture is that it must be completely comprehensive.

We have concentrated in this paper on some of those who have been bereaved in the conflict. However, we also believe that in the context of addressing the pain and loss of all sections of the community in Northern Ireland, the government response should not be limited to this issue alone. While obviously recognising the fundamental loss experienced by those whose loved ones died, we should remember that many in Northern Ireland have suffered directly and indirectly because of the last thirty years. Prisoners and their families, children whose lives have been blighted by growing up in the midst of a conflict, victims of domestic or racist violence who have often been ignored and too many others have suffered as a result of the tragic events this society has gone through. Their pain should also be recognised.

Conclusion

The issue of victims is one of the most sensitive and perhaps the most sensitive matter to be dealt with in the context of the peace process. However, it is a matter which must be addressed comprehensively. As the Good Friday Agreement stated:

“The tragedies of the past have left a deep and profoundly regrettable legacy of suffering. We must never forget those who have died or been injured, and their families. But we can best honour them through a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all.”

The way in which the government treats victims can become a leitmotif for the new society which we wish to build. All must be treated equally and there can be no distinction because of the status or motivation of who their killers were. While all parties to the conflict have a responsibility in this regard, there is a particular onus on government, because of its obligations under international law and its role in society, to now establish a pattern of open and transparent behaviour which will become the norm for government in the future.