

CAJ's Submission no. S433

CAJ's submission to the United Nations Human Rights Committee on List of Issues for the UK's 7th Periodic Report

July 2014

About CAJ

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

Submission from the Committee on the Administration of Justice (CAJ) to the United Nations Human Rights Committee on List of Issues for the UK's 7th Periodic Report

July 2014

1. The Committee on the Administration of Justice (CAJ) is an independent human rights NGO with cross community membership in Northern Ireland and beyond. It was established in 1981, campaigns on a broad range of human rights issues and is affiliated to the International Federation of Human Rights (FIDH). CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its international human rights obligations. CAJ has been awarded several international human rights prizes, including the Reebok Human Rights Award, and in 1998 was awarded the Council of Europe Human Rights Prize.

Dealing with the Legacy of the Conflict in Northern Ireland

2. CAJ urges the Committee to include dealing with the legacy of the Northern Ireland conflict in the List of Issues for the UK's examination. The Committee's previous concluding observations in 2008 expressed concern that:
...a considerable time after murders (including of human rights defenders) in Northern Ireland have occurred, several inquiries into these murders have still not been established or concluded, and that those responsible for these deaths have not yet been prosecuted. Even where inquiries have been established, the Committee is concerned that instead of being under the control of an independent judge, several of these inquiries are conducted under the Inquiries Act 2005 which allows the Government minister who is responsible for establishing an inquiry to control important aspects of that inquiry. (art.6)
3. The Committee urged the UK to conduct "*as a matter of particular urgency given the passage of time, independent and impartial inquiries in order to ensure a full, transparent and credible account of the circumstances surrounding violations of the right to life in Northern Ireland.*"¹
4. CAJ views accountability for human rights violations, including the right to life, as essential for ensuring non-recurrence of security force practices outside of the law during the conflict. Despite proposals produced on the back of multi-party talks in December 2013, chaired by former US diplomat Richard Haass, which advocated a sole overarching 'Historical Investigations Unit',² the state

¹ CCPR/C/GBR/CO/6, 30 July 2008, paragraph 9.

² Proposed Agreement 31 December 2013 An Agreement among the Parties of the Northern Ireland Executive on Parades, Select Commemorations, and Related Protests; Flags And Emblems; and Contending With The Past. Published by the Office of the First and deputy First Minister.

party has yet to commit itself to legislating for any such independent mechanism.

5. Instead at present there is a piecemeal approach involving a variety of mechanisms dealing with the legacy of the conflict. This itself only emerged largely as a result of the UK agreeing to a 'package of measures' on the back of a series of successful cases taken to the European Court of Human Rights (known as the *McKerr*³ group of cases or Cases concerning the action of the security forces in Northern Ireland). CAJ acted for the applicants in a number of these cases which came before the court in 2001-2003. The Court found the UK to be in breach of its *procedural* duties for effective and independent investigations under Article 2 (right to life) of the European Convention on Human Rights (ECHR). The 'package of measures' was agreed which led to changes to inquests and prosecutorial procedures. The PSNI Historical Enquiries Team (HET) and the remit of the Police Ombudsman to investigate the past are also listed as part of the package of measures. It is notable that over ten years on from these cases there are still significant delays, deficiencies and obstruction of the implementation of the judgments
6. In general whilst some victims families have obtained a measure of resolution the "package of measures" has increasingly unravelled in recent years. CAJ and other human rights groups concerned that Northern Ireland is witnessing such a level of official obstruction of legacy investigations that a concerted effort to cover up human rights violations is taking place. Since the Committee's last examination of the UK significant developments which have taken place include:
 - **The UK reneging on its commitment to hold an independent public inquiry into the murder of human rights lawyer Pat Finucane** in 1989. This is despite the Committee's concluding observations and the UK having committed to doing so in a (UK-Ireland) international agreement (Weston Park Agreement 2001). Instead the UK Prime Minister appointed a senior lawyer to conduct a more limited review of the papers. The Inquiries Act 2005 has retained all its powers permitting ministerial interference despite the Committee's concerns.
 - **The 'lowering of independence' and suspension of the Police Ombudsman's Office role in dealing with conflict-related cases.** The Police Ombudsman's office is a powerful independent body with powers to investigate police involvement in human rights violations, including killings, during the conflict. However during the tenure of the second police ombudsman the office was undermined following police and political interference in its work. The resignation of the Chief Executive and critical reports in 2011 from CAJ and subsequently the official Criminal Justice Inspector, which among other matters found that investigation reports into conflict-related cases were altered or

³ *McKerr v the United Kingdom*, judgment of 4 May 2001, final on 4 August 2001.

rewritten to exclude criticism of the police without explanation, were followed by the suspension of the historic caseload and the resignation of the Police Ombudsman. A successor was appointed and a process of internal reform took place which has re-established the credentials of the office and, following a favourable report from the Criminal Justice Inspector, has been able to resume historic investigations. However, legislative amendments to address gaps in the Ombudsman's powers have not been implemented.

- **The suspension of the PSNI 'Historical Enquiries Team' (HET) following an official inspection finding that cases where agents of the state were involved in killings had been given such preferential treatment the HET had been operating unlawfully.** The HET was established as a unit of the Police Service of Northern Ireland (PSNI) to review unresolved killings attributed to the conflict. With the exception of cases in which a police officer was directly responsible for a death this includes 'state involvement cases' involving the armed forces or agents and informants working for the police or security services. Critical academic reports and concerns from NGOs led to the Northern Ireland Policing Board calling in Her Majesty's Inspector of Constabulary to conduct a review of the HET. This inspection reported in July 2013 and found that the approach to state involvement cases had been incompatible with legal duties under the ECHR. The work of the HET in issuing reports was subsequently, and remains, suspended.
- **Protracted delays and limitations in the Inquests system in relation to conflict related killings.** CAJ has become increasingly concerned at the ability of the inquest system, as it is functioning at present, to provide effective investigations into conflict related deaths in compliance with the Covenant. There are currently dozens of inquests which have been opened but not completed, primarily due to delays in the state disclosing information. There have been both recent domestic and European Court of Human Rights (ECtHR) decisions (see *McCaughey & Otrs v UK*, and *Hemsworth v UK*) which have found the UK to be in breach of its human rights obligations in relation to legacy inquests.
- **The growth of National Security doctrine and secret courts.** The UK has extended 'national security' exemptions to a range of accountability bodies with a role in Northern Ireland and has used the doctrine to restrict disclosure of official records. One official policy document has sought to designate the whole of 'the past' in Northern Ireland as a national security matter with the effect of preventing access to documents. In addition the UK has also extended the potential for 'Closed Material Procedures' to all civil proceedings, meaning cases involving 'national security' information can now be held in secret. This includes cases whereby agents of the state may have been involved in human rights violations. This has already

impacted on conflict related cases whereby victims' relatives have taken civil claims against the state.

7. A number of the above concerns have also been articulated within the Council of Europe human rights system and other UN Treaty Bodies. The following extracts provide examples:

The absence of any plausible explanation for the failure to collect key evidence at the time when this was possible, and for attempts to even obstruct this process, should be treated with particular vigilance. In fact the period of demonstrated, if not deliberate, systematic refusals and failures to undertake timely and adequate investigation and to take all necessary steps to investigate arguable allegations under [ECHR] Articles 2 and 3 seem as a matter of principle to make it possible for at least some agents of the State to benefit from virtual impunity as a result of the passage of time. (ECtHR, Concurring Opinion of Judge Kalaydjieva⁴)

The [UN] Committee [Against Torture]...notes however, reports of apparent inconsistencies in the investigation processes where military officials are involved, which delayed or suspended investigations, thus curtailing the ability of competent bodies to provide prompt and impartial investigations of human rights violations and to conduct a thorough examination of the systemic nature or patterns of the violations and abuses that occurred in order to secure accountability and provide effective remedy. In addition, the Committee is concerned about the State party's decision not to hold a public inquiry into the death of Patrick Finucane. (Committee Against Torture, Concluding Observations on UK, May 2013)

8. In June 2014 the Committee of Ministers of the Council of Europe which oversees the implementation of ECtHR judgements issued a decision in relation to the above group of cases, which, among other matters:

“welcomed in particular the proposal to create a single, investigative mechanism (the **Historical Investigations Unit**)” [in the **Haass Proposed Agreement**] ...considered that the establishment of such a body would be a significant development with potential to bring meaningful and positive change to the investigation of legacy cases”; and **strongly encouraged the authorities to use all necessary means to pursue it**;...“underlined...the importance of the independent **domestic review and reform of the Police Ombudsman**” and **urged this was completed to ensure investigations are as effective as possible**...“considered that **further measures may be needed to address the causes of the excessive delay in inquest proceedings**”⁵

CAJ would urge the Committee to include dealing with the include the legacy of the Northern Ireland conflict in its list of issues for the UK, and in particular ask which steps it will take to ensure its duties under Article 6 of the Covenant are met.

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⁴ in *McCaughey & Others v the UK and Hemsworth v the UK*, 16 July 2013

⁵ 1201DH meeting of the Ministers' Deputies / 03 June 2014 cases no 25