

Why the Appointment Process to the Northern Ireland Human Rights Commission Matters

In February the Secretary of State issued a public notice from the Northern Ireland Office inviting applications for the position of Chief Commissioner and seven commissioners to the Northern Ireland Human Rights Commission. The Commission was established by the Northern Ireland Act 1998, and was one of the core human rights institutions contained in the Belfast/Good Friday

With pending selection CAJ confirms the importance of a transparent, accountable and human rights compliant appointment process. Given the core work of the Commission it is important that appointments reflect the strengths and depth of human rights expertise in Northern Ireland. The Commission should not be an elitist nor party political partisan body. The selection process should not be one where trade offs on political representation from nationalist and unionist communities are the primary criteria for short-listing and appointment. We also underscore the importance of appointing a full-time Chief Commissioner, and raise our concerns that the public notice suggests negotiations on a part-time 'drop-in' Chief Commissioner might be contemplated by the Secretary of State. The United Kingdom, like numerous other western democratic states, is a signatory to the major international human rights treaties, including the ICCPR and the ECHR. This means that treaty obligations require the UK to enforce domestic measures that advance the protection of human rights. Appointments to such bodies should reflect human rights compliance in process, criteria, and selection. But despite their potential, problems have invariably emerged. They include:

- Governments create nominally independent bodies, with few powers and continue to exert political control over the issues that lead to and may be responsible for human rights violations.
- Human Rights Commissions become a means to co-opt the critics of the state.
- Human Rights Commissions are a window dressing exercise masking a lack of commitment to eradicating the causes of human rights violations within the state.
- Lack of funding makes the mandate of a Human Rights Commission impossible to discharge and therefore meaningless.
- In some states, appointments have been characterised by cronyism and 'insider' dealings.

In response to the possibility of manipulation in the creation of National Human Rights Institutions, the Paris Principles came into being. The Paris Principles are 'soft-law' legal norms. In thinking about the appointment process to the NIHRC - CAJ encourages the Minister to fulfill the expectations of the Paris Principles. Human rights violations occur within states. Effective protection must also come from within the state, both to remedy a particular violation and to prevent future violations. The Human Rights Commission is an important institutional actor in remedy and prevention. The central actors in that effort are appointed Commissioners. A Human Rights Commission is only as good as its Commissioners. It is vital that Human Rights Commissions have connection to and experience of human rights law and practice. Human Rights is a broad field, but the breadth and depth of human rights expertise in Northern Ireland should be represented on any genuinely representative Commission. Finally, given the vulnerability and the lack of voice that those who are at the coalface of human rights violations, the Commissioners appointed should, in some fulsome measure, offer genuine connection and voice to those whose ability to advocate for themselves is muted.

Professor Fionnuala Ní Aoláin

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CAJ meets with delegation on Framework Convention on National Minorities

The Framework Convention for the Protection of National Minorities ('FCNM') was adopted by the Council of Europe in 1994 and ratified by the UK in 1998. The Advisory Committee is a panel of independent experts, who monitor the application of the FCNM in each state party. This month a delegation of the Advisory Committee visited Belfast to monitor the protection of national minorities in Northern Ireland ('NI'). CAJ met with the delegation and also provided a submission and key recommendations on the application of FCNM in Northern Ireland.

CAJ limited its submission to those issues that cause us concern, but may not have been covered by other groups' contributions to the Advisory Committee. We were disappointed by the lack of information on NI in the UK's 3rd Periodic State Report ('the State Report'). Although the Executive failed to provide the information requested, the UK government has ultimate responsibility to provide a full state report. CAJ also pointed out that the UK's scope of application for FCNM is too narrow, as it precludes religious groups and is now static, given the repeal of the legislation within which the scope of application is defined.

Article 3 – Right to self identify

CAJ noted the lack of reference to Irish identity in the State Report, given its central importance to many in NI, as recognised in the Good Friday / Belfast Agreement. We also confirmed that the fair employment monitoring in NI continues to be beneficial, given the ongoing inequalities and tensions in our community.

Article 4 – Full and effective equality

We set out our support for a Bill of Rights for NI ('BORNI'), as agreed in the Good Friday / Belfast Agreement. We explained our concerns about the lack of governmental commitment to a BORNI and the risk that it may be subsumed into a wider UK debate. We recommended the government reconsider the NI Human Rights Commission's advice on a BORNI. In our submission, we also set out our concerns that NI's equality legislation is complex, piecemeal, inconsistent and incomplete. We recommended that the Single Equality Bill be revisited, as agreed in the St Andrews Agreement. CAJ also underlined that public authorities' statutory duty to have due regard to promoting equality of opportunity is not being effectively applied or enforced. We explained that its incomplete, incorrect or non-substantive application limits its ability to ensure full and effective equality for various national minorities. We also provided statistics, which show that inequalities remain for Catholics in relation to both employment and housing.

Article 6 – Mutual respect, understanding and cooperation

CAJ explained how NI's integration policies, between the two main communities, risk worsening inequalities and community relations, as they do not take into account the inequalities suffered in the past and in the present. The emphasis on shared spaces, without proper consideration of socio-economic inequalities, could inadvertently serve to weaken social cohesion. We also recommended a more inclusive approach to religion in schools, and provision for alternative instruction for pupils who opt-out. We were concerned by the low rates of detection and prosecution of hate crimes, including sectarian hate crimes. We also recommended the suspension of 'stop and search' powers, pending the Protection of Freedoms Bill, due to the lack of safeguards. We set out some equality issues in NI's prisons, including a lack of monitoring, access to religious services and diversity training; and a low representation of Catholics in its workforce.

Article 10 – Right to use minority language

CAJ was concerned by the exclusion of the Irish language in courts. We recommended the repeal of Administration of Justice (Language) Act (Ireland) 1737, and also the introduction of an Irish Language Act, as agreed in the St Andrews Agreement.

Article 15 – Effective participation

We explained that the proposed lapsing of the police 50:50 recruitment policy would lessen Catholic representation in the Police Service of NI, which is already proportionately low. We recommended that the Police 50:50 policy continue or that, at least, alternative measures be put in place to help ensure the effective participation of Catholics in public life. Finally, CAJ underlined the economic inequalities suffered by national minorities in NI and the risk that, in times of austerity, their economic participation could worsen.

The full CAJ submission and key recommendations can be found at www.caj.org.uk

CAJ launches Human Rights Manifesto

The Committee on the Administration of Justice has issued a ‘Human Rights Manifesto’ in the run up to the May Assembly elections. The manifesto outlines CAJ’s basic human rights goals for the new Assembly and confirms that the protection and promotion of human rights must be at the core of the next phase of devolved government.

Mike Ritchie, CAJ Director, says, “Human Rights provide the foundation for any democratic government. As we complete our first full parliamentary term in 40 years, CAJ is taking the opportunity to set out some specific human rights goals which we believe are vital to the strengthening of the next Assembly. We call on all MLAs to support a culture of equality by ensuring that the principles of human rights lie at the heart of governance in Northern Ireland.”

CAJ calls on political parties to consider the following matters for inclusion in their programme for the coming elections and Assembly term. We are pleased that devolution of policing and justice has happened and appears to be bedding down without any of the difficulties that many feared. However, having local ownership of the criminal justice system means that politicians can influence and shape policing and the criminal justice system in different directions. We hope that progressive reform and respect for human rights will inform debates on how to take things forward.

Human rights were given a central position in the Good Friday/Belfast Agreement, in recognition of their vital importance to a peaceful and thriving future in Northern Ireland. It is therefore fundamental that all political parties reassert their commitment to human rights in the upcoming election. In particular, we ask that the parties commit to the following:

1. Support holistic prison reform based on the human rights of both prisoners and staff.
2. Commitment to a representative police service.
3. Support the creation of effective accountability arrangements in relation to the Public Prosecution Service to ensure greater transparency and public confidence in this office.
4. Commitment to support a community safety strategy that looks beyond retribution and the criminalisation of young people.
5. Address the backlash against human rights and especially the European Court of Human Rights in politics, media and public opinion, in order to prevent a rollback in respect for human rights.
6. Endeavour to legislate on equality issues in the next term of the Assembly, to ensure rights are protected in law and in practice.
7. Support the full and effective application of Section 75 Northern Ireland Act 1998 to promote equality in our community.
8. Commitment to the full implementation of United Nations Security Council Resolution 1325, Women, Peace & Security, in Northern Ireland.
9. Renewed efforts and meaningful engagement towards implementation of a Bill of Rights for Northern Ireland as promised under the Belfast/Good Friday Agreement.
10. Commitment to implement Judge Cory's definition of collusion.
11. Commitment to support a human rights compliant mechanism to deal with historical cases for both victims and survivors.

For further details on the Human Rights Manifesto, please visit www.caj.org.uk

Washington Lobbying

CAJ travelled to Washington DC again this year for the annual St. Patrick's Day events. The delegation was expanded since last year. We were joined by representatives from British Irish RIGHTS WATCH, the Human Rights Consortium, Ciarán MacAirt and Geraldine and John Finucane. Our key focus of this trip was to demonstrate that while much has been achieved in the peace process, there are still significant human rights and equality issues to be addressed and it is important that a clear message is sent to the UK and Irish governments that significant aspects of the Agreement remain to be implemented.

While noting the progress within policing and criminal justice over the last ten years, we highlighted the need for a holistic review of the current prison system and acknowledged the establishment of the Prison Review Team by Minister of Justice, David Ford.

We also indicated our concern around the dropping of the 50:50 police recruitment provisions PSNI. Unfortunately these fears have been realised with the Secretary of State's announcement on 22 March 2011 of the decision to end these provisions on 28 March this year. We indicated our support for the retention of these provisions to ensure the promotion of the full and effective equality of Catholics in the police force given:

- The lack of historic representation;
- Continued lower percentage of Catholics in the service;
- The recent decrease in applications to the PSNI from the Catholic community;
- The low retention rate for Catholics and
- The increased residual terrorist threat against Catholic officers.

Together with representatives from the Human Rights Consortium we emphasised the need for the implementation of a Bill of Rights to reflect the "particular circumstances of Northern Ireland"; a commitment which is fundamental to the Good Friday/Belfast Agreement. While the UK government has stated that this issue cannot be progressed due to the lack of cross-party support, this contrasts starkly to the very high levels of cross-community support that exists for a strong Bill of Rights for Northern Ireland. We highlighted our concern at the suggested inclusion of the Northern Ireland Bill of Rights in a proposed UK or British Bill of Rights.

The ongoing inequality and socio-economic disadvantage suffered in Northern Ireland was also on our agenda. Statistically, the historically poorest areas which bore the brunt of the conflict are in many cases relatively worse off than they were during the conflict and this is of great concern for long term stability.

We also highlighted the need to establish a mechanism to deal with our past, given the piecemeal and unsatisfactory approach taken to date. We expressed our concern that the failure to act on any of the recommendations of the Consultative Group on the Past and the inadequacies of the current mechanisms could undermine our future and furthermore called for leadership from all to ensure that our past does not continue to keep us within its grasp. We had the opportunity to meet with the staff of various Senators and Representatives, including Senator Casey, Senator Wicker, Senator Durbin, Senator Shaheen, Senator Collins, Senator Whitehouse, Congressman Poe, Congressman Engel and Congresswoman Ros-Lehtinen (the current Chair of the Congressional Foreign Affairs Committee).

We appreciated in particular the opportunity to meet with Congressman Russ Carnahan, who has been on the Foreign Affairs Committee since 2005 and was Chair of the Subcommittee on International Organizations, Human Rights and Oversight before which we testified in September 2010. We also met with Congressman Donald Payne, member of the Foreign Affairs Committee, Congressman Peter King, and Congressman Chris Smith, member of the Foreign Affairs Committee and Chair of its Africa, Global Health and Human Rights Subcommittee and Chair of the Commission on Security and Co-operation in Europe (U.S Helsinki Commission). We met again with Congressman Joe Crowley, who led on a bipartisan Congressional letter to the Prime Minister last year on the lack of progress on a Bill of Rights for Northern Ireland (see December 2010 issue of Just News). We received great indication of support from those whom we met this year for our key messages.

Other meetings included: updating the staff of the Tom Lantos Human Rights Commission who hosted a briefing on Northern Ireland in March of last year; meeting a senior advisor to the Vice-President and staff of the National Security Council; a meeting with the Irish Ambassador to the US; a briefing with members of the Board of Bridges to Peace and meetings with Amnesty International USA's political director and the CEO of Human Rights First. Finally, we had a very productive meeting with the new Regional Director of the Western Hemisphere Region at the US State Department.

We also had the opportunity to attend and network with the various Irish, UK, and Northern Ireland politicians present (including meeting the new Taoiseach Enda Kenny and Secretary of State Owen Paterson) at the American Ireland Fund dinner, the Northern Ireland Bureau breakfast and the Irish Embassy reception.

We also attended and welcomed the hearing facilitated by the Helsinki Commission on Wednesday 16 March 2011 titled: "*Northern Ireland: Why Justice in Individual Cases Matters.*" This provided an opportunity for witnesses John Finucane, John Teggart, Ciarán MacAirt and Jane Winter on behalf of British Irish RIGHTS WATCH and CAJ to provide testimony. Written evidence from Raymond McCord was also included in the hearing record as he was unable to attend the hearing.

The interest and support expressed by its Chair, Congressman Chris Smith and Congressman Payne at this Commission was greatly welcomed and in particular the Chair's indication that he was to meet with Secretary of State, Owen Patterson, after the hearing to discuss the longstanding concerns in the cases addressed during the hearing and other cases. In welcoming us to the hearing he committed to an "accelerated focus" on Northern Ireland and eloquently highlighted the importance of dealing with our past:

"Equivocating on the issue of truth and justice for past crimes will only embolden those elements responsible for them from the resulting impunity. The time has come to focus truth's light on the murky relationships and collusion that existed between the security forces and paramilitary organizations in Northern Ireland and hold those responsible to account."



Pictured L-R – Ciarán MacAirt, Christopher Stanley (British Irish RIGHTS WATCH), Sorcha McKenna (Human Rights Consortium), Congressman Russ Carnahan, Aideen Gilmore (CAJ), Patricia McKeown (UNISON), Patrick Corrigan (Amnesty International), Gemma McKeown (CAJ), Debra Carnahan.

Taking a closer look at CAJ

Each month in 2011, Just News will profile a different staff member, outlining his/her role in the organisation and giving an overview of the kind of work they do on a day to day basis. If you believe the CAJ staff person can be of any assistance to you, please contact them directly.

Aideen Gilmore, Deputy Director

Aideen Gilmore has worked with CAJ for eleven years. In this recent interview with the Belfast Media Group to celebrate CAJ's 30th anniversary, Aideen reflects on the work of CAJ throughout its 30 year history and her role within the organisation (this article has been edited for Just News and reproduced with the kind permission of the Belfast Media Group):

“After thirty years, CAJ is continuing in its influential role as an independent human rights organisation. Established in 1981, CAJ actively lobbies and campaigns on a range of human rights issues, working tirelessly to ensure that best practice and a high quality of standards in terms of justice is delivered here. Affiliated with the International Federation on Human Rights, CAJ has been the recipient of many international accolades for its efforts in the human rights arena, including the Reebok Human Rights Award and the 1998 Council of Europe Human Rights Prize. CAJ's Deputy Director Aideen Gilmore told Belfast Media Group how it all began.

‘CAJ grew out of a conference held in Queens in 1981, chaired by Lord Gardiner, which was concerned with the administration of justice under emergency laws. The conference was attended by over one hundred individuals and organisations from the legal, political and community spheres and it was the first time that so wide a range of people had come together to discuss these issues of concern. The conference plenary unanimously passed two resolutions – that a judicial review of the administration of justice in Northern Ireland should be established, and that the convenors of the conference and others interested should continue their work on the specific topics discussed that day. From there CAJ was born.’ Much has changed here since 1981 and just as society has moved forward, for the most part so too have the issues, but not all, as Aideen explained. ‘1981 was arguably one of the most difficult years in the history of the conflict, but the report from that initial conference highlights some of the key human rights issues of concern at the time, including arrest and interrogation, the need for independent complaints procedures, Diplock courts, and prisoners’ rights. Obviously things have changed a lot in Northern Ireland and undoubtedly the human rights situation has improved – the Belfast/Good Friday Agreement was an important milestone in recognising the role inequality and human rights abuses had played in the conflict, and thus their centrality in its resolution.’

‘However, what is particularly striking is that one of the main reasons the conference was originally held was concern for the administration of justice under the emergency law regime and this is still pertinent as we still have so-called ‘emergency powers’ on the statute books today. CAJ continues to campaign for them to be removed. CAJ has four main programme areas – policing, criminal justice, equality and the protection of rights. Each programme area is different; in relation to policing and criminal justice, for example, our work can be more policy-focused than it may have been in previous years but we still receive and assist with individual complaints and examine patterns or trends, for example, the use of “stop and search” powers. A major element underpinning all aspects of the work is the past - much of our legal work is related to cases from the past that still have not been resolved, and the past still has a major impact on our present-day policing and criminal justice system. We have held a number of events in recent years examining the need to develop some mechanism to deal with Northern Ireland’s past. Our work on the protection of rights involves continuing to press the government to deliver on a Bill of Rights for Northern Ireland as promised in the Agreement. We can also provide human rights training and education to community groups. Our equality work can be more technical – since the Agreement, there is now a legal requirement on public bodies to promote equality of opportunity in policy-making, the implementation of which we monitor and thirteen years on there is still a long way to go.’ While CAJ’s remit is solely the North, such is its international reputation that its members have been called to testify in other jurisdictions including the US Congress. That alone is testament to the hard work carried out and the ground covered in the past three decades. It has come a long way from its somewhat humble beginnings in 1981 but CAJ has proved its worth and a constructive future is certain for this high-ranking organisation.”

To contact Aideen Gilmore, please email aideen@caj.org.uk

Creative reflections on key human rights instruments - European Convention on Human Rights 1950

The European Convention on Human Rights Declaration of 1950 was a shining beacon of common sense, with heady expectations, directed at mankind. Its release was onto a dark fearful world still in shock and depression after World War II. The articles were a guiding set of principles for its signatories. It is not too much to hope that these principles seep into the accepted norm of all governments across the world. Sadly this is not always the case.



Michael McKernon, artist

Civil Liberties Diary - February

3rd Feb

Judge Piers Grant handed down a 3 month jail term to a young single mother who was found guilty of stealing a pair of jeans worth £10. The theft took place in Derry city centre in August 2009. Judge Grant imposed the sentence despite the accused being a first time offender and the court having received assurances that there was a "low likelihood of reoffending." CAJ questioned why a jail sentence had been imposed in this case stating "there is a requirement under human rights that the interests of the child should be paramount." It has been estimated that the mothers prison sentence will cost taxpayers as much as £20,000.

10th Feb

A Sexual Assault Referral Centre (Sarc) will be built in the grounds of the Antrim Area Hospital at a cost of £2 million. The Justice Minister, David Ford, said "this is an important day for all the agencies involved in providing support and help for the victims of rape and sexual assault. This centre will not only offer coordinated medical and aftercare services but also provide a supportive gateway for victims to the criminal justice system."

15th Feb

The office of the Auditor General has uncovered more than £11 million of fraud. Amongst the fraudulent activities is the use of 5,142 blue badges. Blue badges are used in Northern Ireland by disabled people to gain access to parking in key sites. However it has been reported that over 5,000 permits are registered to dead people.

16th Feb

The Office of the Police Ombudsman for Northern Ireland has confirmed it is investigating a claim that a senior police officer had applied pressure to have a colleague's shoplifting case dropped.

The Regulation and Quality Improvement Authority (RQIA) has reported that despite the opening of a £9 million inpatient unit for young people with mental health problems, more than 200 vulnerable children and teenagers were cared for in adult wards between 2007 and 2009. The RQIA has recommended in the past that under 18's should not be treated in adult mental health wards. The recommendation came on the back of an independent review carried out after the death of Danny McCartan who took his own life in April 2005. The recent report by the RQIA make more than 30 recommendations needed to improve assistance to young people with mental health issues.

22nd Feb

Human rights organisations criticise the response of PSNI Chief constable, Matt Baggott, to the findings of the Police Ombudsman's Office into the bombing of McGurk's Bar in 1971.

24th Feb

It has been reported that pensioners are missing out claiming millions of pounds in benefits. The new Audit Office has reported that one in five pensioners is living in poverty because they do not know their benefit entitlements. It has reported that £168 million pension credit and £29 million in housing benefits lay unclaimed by pensioners.

25th Feb

Colin Duffy and five others have failed in their claim that provisions under the anti-terrorism laws were incompatible with their right to liberty and breached their human rights. The court ruled that there had not been sufficient evidence presented to support their claim. It is understood that lawyers for the group will appeal the case to the Supreme Court in London.

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Just News

Just News welcomes readers' news, views and comments.

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