

# Just News

Bulletin of the Committee on the Administration of Justice

## Archbishop Desmond Tutu:

### *South Africa's roller-coaster ride to a Bill of Rights*

*...a tonic of humour and a splash of magic...and you will fly...*

*..the things that bind us, the things that are common to us, are many times more than the things that divide us....*

*"we've had a negotiated revolution. Sworn enemies have actually sat around a table together, people who had given each other awful, awful labels, still sat around a table. People, who had done awful things to one another, sat down and talked and then made a major scientific discovery. They discovered that their adversaries were actually human beings. Human beings who, quite extraordinarily, seemed to be longing for much the same sort of things as they themselves: a secure environment, a happy home, a good school for their children. They thought "hey, we don't have the monopoly on wisdom, and good sense and values." We began almost at daggers drawn and people would frequently do things just to score points. There was a great deal of brinkmanship, the negotiations were not just a simple path, we were not given to being reasonable people who were ready made to make*

*concessions and receive concessions in return.*

On the 6<sup>th</sup> November, CAJ with the Golden Citizens Circle welcomed Archbishop Desmond Tutu to an eager audience of nearly 400 people at the Wellington Park Hotel in Belfast. Given the huge demand, not everyone could be accommodated.

Archbishop Tutu painted a desperate picture of South Africa during the apartheid regime under the rule of a white elitist government. "An example of the most ghastly awfulness", South Africa embraced racism, slavery, colonialism and wars between races within its history....a country where horrendous violence and an obsession with race purity pervaded until the eve of the historic election when a democratic government was finally elected, marking the demise of apartheid. Assassinations, state-sponsored massacres, the bloody contest for political turf; "only five, only six..."...had been killed today...only ..only only.. He chuckled and said "God has a huge sense of humour!"...who



Archbishop Desmond Tutu

indeed could have imagined "South Africa as a beacon of hope?"

#### A little bit of humour...

Undoubtedly the Archbishop himself has a highly developed sense of humour and topped with a school boy grin, he conveyed his anecdotes in the fashion of a true story-teller and entertainer.

Dissolving the concept of a 'Podium or Pulpit Speaker', although his words intertwine politics with religion, Archbishop

*contd on page 2*

**CAJ would like to wish everyone  
Season's Greetings  
and best wishes for 2002**

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Tutu's atmosphere was not one of a conference hall or even a church. He set his own scene – we could have been sitting in front of an open fire with hot chocolate, having dinner with a glass of wine or chuckling over a pint in the local pub...

"...we were called Natives - natives with a capital 'N'. They had some wonderful signs along the roadside, for example, "Drive carefully, Natives cross here." Somebody thought to change one to read "Drive carefully, Natives very cross here"...."

His is not a humour to minimise, dismiss or defend ...to detract from an awful reality or to smooth over painful cracks of the past. On the contrary, his humour takes us all a step back from tunnel vision to perceive a bigger picture...a wider reality enabling greater insights and understanding...a humour which in itself helps to overcome adversity.

### ...and a little bit of magic...

"God has given you an incredible gift, in a wonderful, wonderful sense of humour. I haven't met people who are able to take the mickey out of themselves to quite the same extent as you! Almost just for that attribute, you must succeed! So the burden of what I have come here to say to you is "hey, hang in there". Didn't you see a little bit of that magic in the kind of stuff that was happening around Stormont..."

He described South Africa teetering on the edge of an abyss, hurling towards an oblivion of utter chaos...the vast majority were deprived, oppressed and continued

to be deliberately excluded from the political process as the apartheid regime was a means of institutionalising inequalities.

"The political bosses made no bones about this. They were the top dogs and everyone else who was not white was ipso facto the underdog...Inferior education, inferior health care, they had not even access to clean water. Shoddy matchbox housing in segregated townships was their lot and as to dignity, the top dogs didn't think blacks were persons with any dignity to be respected...It didn't matter if you were educated or not, whatever your status was in the black community, every white person was your superior..."

**A Bill of Rights....no longer a win/lose situation, but a win/win....**

"....Blacks were cheap labour. You could have gone to university and qualified say as a doctor with your white compatriots, and yet from day one, if you are working for government, your white counterpart would earn a higher salary than yours just on the basis of race...they tried to separate us even praying; they didn't want you to be in the same church services. On one occasion, a black woman was in church and she was on her knees. A police officer rushed up and asked "what are you doing?" She said "I'm cleaning sir" and he replied "oh that's ok, I was about to arrest you because I thought you were praying"."

....Given this ghastly history, it should have been that we had no hope. We should have been for the birds! But it didn't happen...we've had a remarkable transition..."

"We had an extraordinary roller-coaster ride. The very moment we said, "gee whiz! Hey, we have made a wonderful breakthrough" and were euphoric and found ourselves on cloud nine, the next moment we were plunged into the slough of despond because something had happened that should derail the whole process. Then, we began speaking about a Bill of Rights, a Constitution, the sort of thing that we thought that we might want. Each, I suppose, initially approached it from the position of, 'well what is good for me?...Then they began - even the most prosaic of them - to dream. They began to be idealistic, and they began to talk about values..."

"...the prize is too precious for you to allow it to be dissipated. God has placed high stakes on you, and God is not a loser...you are made for goodness, you are made for laughter, you are made

for love, you are made for peace, you are made for gentleness, you are made for compassion, you are made for sharing, you are made for being conciliatory. We belong together, there are no outsiders in this family. All are insiders. You are made extraordinarily for transcendence, for peace, for justice, for goodness..."

"...God expects you to shake yourself, to spread out your pinions and to lift off and to soar, to soar. To move towards goodness and love, and justice and peace and compassion. Fly eagle, fly."

A visionary leader indeed...and an inspiration to us all.

**Ella Tighe**

## Holy Cross

In addition to delivering the lecture for CAJ, Archbishop Tutu had a number of other engagements during his stay in Belfast. He met with local children from various backgrounds and schools and also did a small number of media interviews. He also had a private dinner with the church leaders.

His last engagement was a visit to Holy Cross in Ardoyne. He had been aware of the situation and was distressed at the suffering of the girls attending the school. He wanted to hear from the various parties to the dispute but primarily wanted to reaffirm the centrality of the rights of the children to a resolution of the problem.

Along with members of CAJ and the Global Citizens Circle, he visited Holy Cross school for an assembly, meeting the girls, their teachers, and several of the parents. He said prayers with the children and they sang a number of songs together. He was presented with a cuddly toy which all of the children had received to help them sleep at night during the protest.

He then went to Stormont where he met a delegation from Glenbryn, and then had a meeting with four politicians; Billy Hutchinson, Gerry Kelly, Alban Maginnis, and Chris McGimpsey. Unfortunately, Nigel Dodds, MP for the area, was in London that afternoon and had to send apologies. At the meeting with the politicians, it was clear that great efforts were underway to try and solve the dispute, and the Archbishop jokingly spurred the politicians to greater efforts, promising them first-class tickets to heaven if successful!

The Archbishop's message to everyone met in the context of the dispute was the same as it had been throughout his visit – one of the importance of human dignity and respect. In the context of Ardoyne he and CAJ were of course particularly concerned with the human dignity of the children. This principle should have underpinned the security and political response to the situation. Hopefully its implementation will ensure that a dispute like Holy Cross will not happen again.

## Up to date with CAJ

Maggie and Tim attended an Equality Commission conference on the Single Equality Bill.

Martin, Maggie and Paul provided testimony to an Assembly Committee on the criminal justice proposals. There have been meetings of the policing, equality and bill of rights subgroups.

Aideen facilitated a workshop on AIDs and the Bill of Rights.

A press release was issued reinforcing the need for a public inquiry into the Pat

Finucane case after the murder of William Stobie. Paul gave several radio and one television interview.

Membership and subscriptions are now due for 2002. Cost of membership remains the same as last year at local and UK rates: £17.00 (waged) and £5.00 (unwaged), European £15.00, and International £23.00. CAJ welcomes your support.

Finally, we would like to wish everyone a very peaceful and happy 2002.

*Liz McAleer*

### In the Headlines

CAJ holds newspaper clippings on more than 50 civil liberties and justice issues (from mid 1987-December 2000). Copies of these can be purchased from CAJ office.

The clippings are also available for consultation at the office.

Anyone interested in this service, should phone (028) 9096 1122.

# Implementation Plan for the

**The government recently published its Implementation Plan for the Criminal Justice Review and the Justice (Northern Ireland) Bill. The Plan is the governments response to the recommendations of the Criminal Justice Review. The Bill will legislate for those areas which need changes in the law.**

Generally we are disappointed at the contents of the Plan in four principle areas:

- The Courts
- **The** judiciary,
- The prosecution service; and
- The guiding principles.

We are particularly concerned by the failure of the Report to focus on much needed recommendations'. However, more worryingly, the structure of the Plan appears to substantially mirror that of the initial Patten Implementation Plan in that its main purpose seems to be to undermine some of the more radical proposals made by the Review particularly in the area of the prosecution service.

## **No independent mechanism for oversight of changes**

Structurally, we have identified two main problems. The first is that, unlike the recommendation of the Patten Report, there is no independent mechanism for oversight of the changes envisaged. The case for such oversight in this process is more compelling than the case made by the Patten Report. Given the context of the Review, the changes proposed will affect many different agencies and institutions. It would therefore be crucial to have someone charged with overall responsibility for ensuring that change occurs and at the appropriate pace. Leaving this to the NIO or existing agencies will do nothing to inspire confidence that change will actually occur. This is because it was the poor performance of those very agencies which presumably motivated the parties to the Good Friday Agreement to establish the Review in the first place.

The second major problem (which is closely related to the first) is that in the vast majority of the recommendations we have looked at there is no timescale for implementation. Anyone familiar with the process of change in any organisation will immediately recognise this as a major block to

actually delivering change. Firm deadlines must be set if this Plan is to be considered as a contribution to the process of changing the criminal justice system. Combined these two problems mean that those who have been most resistant to change, who have caused many of the problems which have plagued the system, have now been placed in charge of the process of transformation and told they can deliver it at their own pace.

Obviously it is impossible to catalogue the specific concerns we have. CAJ will publish a detailed response to the proposals before Christmas. However, the few examples given below give readers a flavour of what is wrong with the Plan and Bill.

The Review's recommendations in relation to the Director of Public Prosecution were among the most far-reaching they made. While they did indicate that the work of the new office would build on the work of the existing office they also said their recommendations entailed "taking on new work, a different approach to aspects of its existing work and substantial organisational change". At the press conference to launch their report the Review's experts refused to deny that their proposals meant the abolition of the DPP. The Review said they envisaged:

*"major changes in the prosecutorial arrangements in Northern Ireland, which we believe will enhance the system and public confidence in it."*

However, what the Implementation Plan suggests is essentially a new name for the office but very little substantive change. Indeed the Plan recommends the same title for the professional head of the office. In this recommendation the Plan clearly seeks to undermine the process of change in this key area completely. Indeed the Review recommended the importance of change in relation to the description of the professional head of the office, when they said that

*"[A] new title for the head of the organisation would help to demonstrate to those outside it, as well as those inside, that the remit and*

# The Criminal Justice Review

*responsibilities of the organisation have changed considerably."*

The Director who made much questioned decisions in relation to a number of controversial cases including the Finucane murder investigation will have "overall responsibility for creating the new service." How will new mechanisms for accountability, outreach and recruitment function without clear signals that this most unaccountable of organisations has finally been brought to account?

The unaccountability of the DPP is reinforced by the response of the government to the recommendation of the Review in relation to the giving of reasons for a failure to prosecute in certain cases. The practice of the DPP in NI to refuse to give reasons in controversial cases has been one of the key factors in undermining public confidence in the criminal justice system. We provided the Review with detailed case studies in the Finucane murder, the Hamill murder, the murder of Nora McCabe and others which clearly demonstrated that the reluctance of the DPP to give reasons had little to do with concerns about possible injustice to an individual suspect but was primarily designed to protect the interests and reputation of the agencies of the state. The

recommendation of the Review in this specific area was balanced and positive. They argued that the balance should shift towards the giving of reasons but unfortunately accepted that there may be instances where this was not possible because it could conflict with the interests of justice. Essentially the government response is a refusal to accept this recommendation. Nothing is proposed to implement the shift towards giving reasons which the Review recommended.

The government position not only goes against the recommendations of the Review but it also potentially violates the Human Rights Act. As a result of the ECHR decision in *Kelly et al v United Kingdom* (4<sup>th</sup> May 2001) the prosecution service will be obliged to give reasons in cases which involve suspicious or controversial deaths.

The response to many of the proposals is that their implementation will have to await devolution. This is

evidently the case with the new proposals for judicial appointments. We believe Northern Ireland should not have to wait for devolution for the establishment of a Judicial Appointments Commission (JAC).

We believe lay membership of the Commission should at least equal legal membership. Otherwise it is very likely that the representatives of the judiciary and the profession will dominate the discussions. This is particularly so given that the chair is going to be the Lord Chief Justice. The Plan ensures that the majority of members of the JAC are judges.

We do not understand why the lay members should be representative of the community in Northern Ireland but there is no similar obligation in relation to the judicial or legal appointments. At the very least there should be a statutory obligation that the Judicial Appointments Commission as a whole should be representative of society.

When the Plan and Bill were first published the government had given four weeks to respond despite the fact that the NIO Equality Scheme said that the minimum should be eight. In addition to the Plan and the Bill, there was also a four hundred page screening document produced by the NIO and only available on their website and a further screening document from the Northern Ireland Court Service. Allowing four weeks to respond to all of this could hardly be described as meaningful participation. Presumably in recognition of this the government extended the deadline for the consultation period to the 7<sup>th</sup> January. While welcome, this extension includes the Christmas period. If this is the way consultation is going to work in the area of criminal justice, then the Equality Commission needs to take steps to ensure that the level of real consultation improves.

CAJ will closely monitor the passage of the Bill through Parliament and try to ensure that through it and the Plan, the criminal justice system works for the benefit of all. In order to achieve this however, significant changes need to occur to both documents.

**Paul Mageean**

## Déjà Vu? Emergency Laws Post September 11

**The catastrophe of September 11<sup>th</sup> in the United States is undoubtedly the worst atrocity of modern times. The scale of deaths and destruction, and the means used to achieve them are without parallel.**

The President and Attorney-General of the United States have announced a series of legal measures to respond to the crisis. They include limitations on the attorney-client privilege, the creation of Special Military Tribunals, the extended detention of hundreds of men of Middle Eastern origin and measures designed to inhibit the flow of financial support to suspect organisations.

The legal fall-out from September 11<sup>th</sup> is not only confined to the United States. Many governments, including the United Kingdom have grasped the opportunity to streamline and extend their emergency powers. There is more than a whiff of opportunism in the current rush to legislate.

In the UK, the proposed *Anti-Terrorism, Crime and Security Bill* is structured in 14 parts. It operates in the following areas:

- Tackling Terrorist Finances
- Adjustments to Immigration Procedures
- Provisions Related to Religious Hatred or Violence
- New Offences on Weapons of Mass Destruction
- Provisions Related to Pathogens and Toxins
- Provisions concerned with Security at Airports and Nuclear Sites
- Extension of Provisions related to Data Retention and Access.
- Extension of Police Powers in a number of key areas.

The Bill has received extended criticism from many sectors. The strongest evidence of its limitations are the 10 defeats suffered in the House of Lords over the past few weeks.

First, there is the strong sense that the government has used this Bill as a means to implement unpalatable measures that would otherwise have not received parliamentary approval. Second, the inroad made by the Bill on individual liberties is extremely serious. Third, the government has chosen to introduce measures which require the UK to derogate from Article 5(1) of the European Convention on Human Rights. There is no concrete evidence that the UK faces a threat sufficient in legal terms to activate the derogation provision. Finally, while the government has stated that these are temporary measures which will be reviewed, the experience in Northern Ireland has been to prove that temporary measures rarely come off the statute books.

Provisions of particular concern include invasions to individual privacy as a result of the sweeping access given to police of electronic data. There are plans to establish a

code requiring communications providers to retain data for inspection by police longer than the providers themselves need it.

Public bodies (including hospitals, schools and the inland revenue) are currently being asked to disclose information relevant to any investigation relating to terrorism or potential prosecution of a criminal act. The breadth of this provision is awesome, going far beyond the immediate threat of international terrorism and tipping traditional privacy and due process rights askew.

There is an enormous encroachment on the rights of refugee and asylum seekers. This demonstrates that the terrorist threat has been a convenient pretext for legislation which furthers an unpalatable domestic political agenda for the government. The legislation proposes that the Home Secretary can issue a certificate for indefinite detention of suspected foreign terrorists where no safe third country exists for deportation. In such cases there will be no right of judicial review but only an appeal to a closed special immigration appeals commission. Appeals would only be allowed on points of law.

There is also the promise of European Union criminal justice legislation coming directly into British law without substantial parliamentary debate, through the mechanism of secondary legislation. The compromise has been to only fast-track anti-terrorist measures already agreed by EU ministers and to postpone further discussions until a separate bill on the matter is introduced next June. The issue of principle remains unresolved, with a lack of national parliamentary scrutiny on the existing measures almost entirely avoided.

The history of emergency laws tells us that the most critical aspect of avoiding state abuse is to preserve as many levels of review as possible. The most worrying part of the recent debates is not only that the government seeks to institutionalise massive powers with limited oversight - but that those who question the exercise are accused of naivety, disloyalty and even sabotage. Times of crisis require extreme vigilance - lest they become the basis for dislodging our rights and freedoms on the basis that the ends justifies the means.

***Fionnuala Ni Aolain***

## Civil Liberties Law: The Human Rights Act Era

**There is little doubt that the events of 11 September will be a defining moment in world history and will have widespread consequences for many fields and crucially civil liberties. Although there has been much talk about the need to prosecute a war against terrorism to uphold 'our' democratic values, one of the many consequences of the attacks in the USA is that the civil liberties of thousands of people around the world are going to be eliminated altogether or severely restricted. The US government has already arrested and detained hundreds of people and introduced military tribunals. The UK government has now managed to introduce the Anti-Terrorism, Crime and Security Act which is even more draconian than the Terrorism Act 2000.**

The new legislation was enacted in a most cynical manner. It smuggles in a whole range of provisions which have nothing whatsoever to do with the fight against terror. Moreover, the government appears to have deliberately included a number of provisions, which were so extreme knowing that when it conceded on a number of them, the press would report it a sign of flexible government and detract attention away from the rest of the contents. It is no different from introducing a bill to the restore capital punishment with a provision that there should be twenty people in a firing squad and then, following opposition to the proposal, agreeing to ten.

This book on civil liberties by a team of academic lawyers from the universities of Keele, Nottingham and Queen's Belfast is, therefore, very timely. They could not have known that when they penned their opening chapter and noted 'the truth is that these are ... testing times for civil liberties' (p.3) – how prophetic this comment would turn out to be. Nor could they have anticipated how some of the content of the book could become so quickly out of date as the new 'anti-terror' Act was rushed through Parliament.

The book covers a wide terrain and includes chapters on public order, terrorism, policing prosecution and trial, prisoners' rights, privacy, the secret state and freedom of expression

and equality. It is written in an elegant and easily accessible style and contains over two and half thousand footnotes. Its great strength is that issues and developments in Northern Ireland have been fully integrated into the discussion rather than, as is so often the case, ignored altogether or relegated to a footnote or two. In particular, the chapter on terrorism draws heavily on the Northern Ireland experience to develop the argument that the term 'terrorism' is politically loaded and confusing and to reject the idea that civil liberty arguments are rendered pointless or impotent in the face of the threat from political violence. Moreover, its conclusion is very pertinent:

*"...historically, anti-terrorist policy has been largely reactive and frequently contradictory. The repressive nature of state responses has both perpetuated the political conflict and created the conditions in which human rights abuses have occurred, especially through the lack of adequate accountability mechanisms."*

Each chapter is organised around some proposition or key debate. For example, the chapter on *Public order law and practice* starts with the proposition that this area is in deep

trouble not only because there has been little debate about the democratic value of protest but also because the whole area is now dominated by the ascent of 'law and order' in party-political, pressure group and media circles. These two themes are then systematically examined. Similarly, the chapter on *Beyond the Secret State* is organised around the more contentious proposition that we have moved beyond the secret state. This form of presentation, coupled with the quality of the writing, transforms what could have been another dry legal textbook to a much more racy read, which is further enhanced by discussions of some of the more important theoretical debates in the areas covered.

My main criticism of the book is that it does not look beyond these islands to what has been happening to civil liberties in the European Union in relation to justice, policing and home affairs. Numerous measures, which severely erode civil liberties, have been approved, often without any public discussion or debate in either the UK or Irish parliaments. Some reference to these developments, which have been systematically documented in *Statewatch* - the only publication which is dedicated to monitoring civil liberties in Europe – would have enhanced the analysis. This is, however, a small quibble about a book which provides an original approach to the analysis of civil liberties. It is essential reading, particularly at this time, when civil liberties and democratic rights have never been more threatened.

**Paddy Hillyard**

Noel Whitty, Thérèse Murphy and Stephen Livingstone -  
ISBN 0 406 5511 7 Price £26.95  
London: Butterworths

## Civil Liberties Diary

**Nov 1** A final decision on the 11+ test and changes to post primary structures will not be known before next year. The Burns Report according to the Minister for Education represents the biggest change in education in decades. As pupils from Holy Cross School looked forward to the Halloween break it was hoped that a breakthrough in the dispute could be achieved.

**Nov 3** Children charities have begun discussion on the proposed Protection of Children and Vulnerable Adults Bill. The Bill aims to establish a system of protection for our most vulnerable members against those who seek to cause them harm.

**Nov 5** Garvaghy Road residents have claimed police escorted Orangemen without regalia from Drumcree church through a nationalist area of Portadown. Police have denied there was a procession of any escort.

**Nov 6** The Head of the Republic's Equality Authority has reported a significant increase in racial discrimination in the workplace. Niall Crowley said 20% of the authority's caseload involved complaints of discrimination based on ethnicity and colour.

**Nov 7** Parents of children at Holy Cross Primary School may take legal action in an attempt to end the loyalist protests. The Right to Education Committee, said they were hopeful that the N.I. Human Rights Commission will take a test case.

**Nov 8** The new Policing Board consisting of UUP, DUP, and SDLP and nine independents got down to business at its headquarters in Belfast yesterday.

Equality Commissioner, Joan Harbinson has told educationalists at a conference on racial equality in schools, that children of six or seven must be prevented from developing racist attitudes. Schools must

become centres of fairness and inclusion where diversity is celebrated, she said.

**Nov 9** Detectives investigating the murder of N.I. human rights lawyer, Rosemary Nelson, have arrested a man near Bristol.

The first official meeting between the N.I. Human Rights Commission and the Republic's Human Rights Commission has been held in Belfast. It hopes among other things to produce a charter to protect the fundamental rights of everyone living in the island and which all democratic political parties should find acceptable.

**Nov 12** The NIO is expected to publish today, the long awaited plans for the implementation of the criminal justice review. It will include the government's response to the Criminal Justice Review group's recommendations and will be accompanied by a draft bill outlining how a number of recommendations will become law.

It has emerged that the Police Authority at its Nov 1 meeting approved the purchase of over 50,000 plastic bullets.

**Nov 14** British-Irish Rights Watch, a human rights group said yesterday it was disturbed by the allegation that a police probe into the murder of journalist Martin O'Hagan could have been compromised to protect an informer who may have been involved in the shooting

**Nov 15** Lawyers for the family of murdered Belfast solicitor, Pat Finucane have begun a legal challenge against Metropolitan Police Commissioner Sir John Stevens. They claim he failed to provide evidence relating to the killing despite an alleged offer to do so.

**Nov 27** Children at Holy Cross primary school returned to their classes yesterday without facing

loyalist protest, for the first time in 12 weeks. The police presence was dramatically scaled down but officers remained on stand by in case of trouble.

**Nov 28** Both the CAJ and the British Irish Rights Watch have said that the government's appointment of an international judge to examine the cases of Pat Finucane and others was inadequate. They believe that there must be independent public judicial enquires into the murder and killing of Rosemary Nelson, Billy Wright and Robert Hamill.

Sir George Quigley has been appointed to review the workings of the Parades Commission. The review proposed by the Weston Parks talks comes after increasing pressure on the NIO from unionists and nationalists to have a fresh look at the Commission's work

**Nov 29** A lawyer representing Bloody Sunday soldiers paid tribute to the courage of Derry man Paddy Walsh who crawled through British army gunfire to reach the body of Patrick Doherty who had been shot dead. Mr Walsh said he went to the body to try to do something for him. He did not care what was going on round him he said.

*Compiled by Peter Gahan from various newspaper sources.*

### Just News

**Just News** welcomes readers' news, views and comments.

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