

WAR ON TERROR

# Lessons from Northern Ireland

An Executive Summary

January 2008

CAJ

Committee on the  
Administration of Justice

## Human rights abuses fuel conflict

The Committee on the Administration of Justice (CAJ) believes that human rights abuses fuelled the conflict in Northern Ireland.

Unless lessons from places like Northern Ireland are taken on board, advances in protecting the dignity and worth of all human beings, as summed up in the 1948 Universal Declaration of Human Rights, will be undermined - perhaps irretrievably.

These lessons have direct relevance on current debates about the War on Terror and comparable situations around the world.

- \_ What can be learned from internment in Northern Ireland in relation to activities in Guantanamo today?
- \_ How can lessons learnt from ill-treatment in Northern Ireland be applied to the recent experience in Abu Ghraib?
- \_ Can the effect of emergency powers legislation in Northern Ireland shed light on the use of similar special powers today, such as the attack on due process rights of terror suspects?
- \_ How can the treatment of suspect communities in Northern Ireland be compared to the treatment of different societal groupings suspected of terrorist activities today?

## Terrorism, Counter-Terrorism and Human Rights

In October 2005 the International Commission of Jurists organised an Eminent Jurists Panel to conduct a global study on Terrorism, Counter-Terrorism and Human Rights. CAJ invited the Panel to include Northern Ireland in its study.

In 2006 and 2007 the Panel travelled to Australia, Canada, Colombia, East Africa, Middle East, North Africa, Northern Ireland, Pakistan, Russia, South America, South Asia, South East Asia, the UK, the USA, and the European Union.

In Northern Ireland the Panel received direct testimony from human rights groups, police and law enforcement officials, victims, legal practitioners and academics, as well as representatives of the Northern Ireland Human Rights Commission, the Law Society, the Bar Council, the judiciary and the Public Prosecution Service. There were also three thematic seminars organised on the topics of lethal force & collusion, internment and ill-treatment, and suspect communities.

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The Panel will be issuing its own report on its findings, and initial feedback suggests the jurists found Northern Ireland's experience very useful.

CAJ is publishing a report devoted solely to the Northern Ireland experience, and that full report entitled War on Terror: lessons from Northern Ireland brings together our analysis of much of the material submitted to the Panel during its visit.

### Why look at Northern Ireland?

A small geographic region, Northern Ireland has a population of only 1.6 million, but it lost 3,600+ people in the conflict. That is equivalent in per capita terms to the loss in the USA of five Twin Towers for each of the past 30 years.

There are few jurisdictions in the world that have experienced emergency legislation and the operation of counter-terrorism measures for such a prolonged period of time as Northern Ireland - reaching back to at least 1921.

In addition, few other places have experienced the intensity of conflict over such a long period – 30+ years - until the Good Friday/Belfast Agreement was signed in 1998.

“There was almost complete acceptance... that they had really made a mistake in Northern Ireland. Their policies... didn't stop terrorism, they provoked it...”,

**South Africa Supreme Court Justice Arthur Chaskalson.**

### Key lessons from the experience in Northern Ireland

- \_ Human rights abuses fuel conflict.
- \_ The integration of human rights measures into legislation, policy and institutional practice is essential.
- \_ Protection of due process is vital to the security and stability of society.
- \_ Equality and non-discrimination practices are crucial to security and strong community relations.

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- \_ Domestic efforts to protect human rights in times of crisis need to be backed by international measures.
  - \_ Special or emergency legislation can easily lead to serious abuses and be counter-productive.
  - \_ Token democratic and legal safeguards are not enough to keep in check a state with extraordinary powers.
  - \_ The tragedies of the past must be confronted to ensure lasting peace and stability.

### Negatives: What does not work

- 1\_ Special or emergency legislation** - can easily lead to serious abuses and be counter-productive.

There is extensive evidence that emergency or special legislation, introduced to counter grave violent threats, may lead to serious human rights violations and can be counter-productive.

Such measures should be subjected to a transparent and objective balancing exercise to ensure that the rights of individuals and society as a whole are properly protected. Whatever measures are introduced must be legal, necessary and proportionate.

**Our experience:** The Northern Ireland experience shows that emergency law corrodes the normal criminal justice system and politicises the rule of law.

Emergency legislation:

- \_ Allows a climate of fear to be misused against minority groups;
- \_ Prioritises the gathering of information for intelligence/political purposes rather than for evidential reasons;
- \_ Corrupts individuals and institutions, especially undermining the vital non-political and independent role that must be played by judges, lawyers and police.

Emergency legislation is ineffective in deterring terrorism because it demonises and alienates the very communities that could be of most assistance in fighting terrorism.

Emergency legislation often fuels the violence it is attempting to undermine by making real or perceived grievances worse, by normalising violence, and by potentially giving propaganda victories to state opponents.

**2\_ Token democratic and legal safeguards** – are not enough to keep in check a state with extraordinary powers.

When governments that consider themselves democratic enact emergency or special legislation, they often also introduce several supposed human rights safeguards to counter their critics. Such safeguards rarely work effectively.

**Our experience:** Regular and independent reviews of emergency powers were a common feature in Northern Ireland. However, the review process rarely led to fundamental change. This was either because the reviewers were unwilling to challenge the Executive, and/or because their terms of reference were extremely limited.

The judiciary is often cited as a vigilant protector of rights, but judges are not immune to the climate of fear that is often deliberately stoked to maintain public vigilance. The concept of ‘national security’ is allowed to predominate over all other considerations, and yet only the government of the day is authorised to interpret its meaning.

## **Positives: What works well**

**1\_ Integration of human rights measures into legislation, policy and institutional practice.**

The greatest duty of any state is to ensure the safety and security of its people. This requires a clear and public commitment that the rule of law and human rights will be protected at all costs.

States should assess whether their legislative framework is sufficiently robust in human rights terms, including anti-discrimination and equality legislation. If this is the case, it will:

- \_ facilitate quicker and more effective remedies for wrongs done;
- \_ negate the need for victims and victims’ families to engage international institutions for remedies;
- \_ help avoid the wrongs in the first place.

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**Our experience:** In Northern Ireland, the Human Rights Act was introduced in 2000. If this legislative framework had existed in domestic law earlier, there would have been less need for many families to pursue legal remedies to the European Court of Human Rights.

The possibility of creating a Bill of Rights for Northern Ireland is now being discussed. If such a foundational document had already existed, people with grievances would have had a positive outlet for many of their concerns.

Policing was highly contentious in Northern Ireland. The report cites frequent allegations of ill-treatment, lethal force and discriminatory stop-and-search practices.

The peace negotiations set out a vision for policing in the future and had the government establish an independent international commission to make recommendations about how to achieve that vision.

The Commission proposed measures for ensuring:

- a more representative police;
- human rights training;
- more effective accountability mechanisms;
- a completely independent complaints system;
- greater community involvement with the police.

The 175 recommendations, and the new policing institutions created, offer a blueprint for use and adaptation anywhere in the world.

Policy measures are also needed to monitor the impact of legislative change and gather detailed statistics. The police know, for example, that there are legislative and institutional constraints on their use of force – but they need policy guidance regarding:

- the circumstances in which the use of force is allowed;
- the principles which need to be applied in any use of force;
- how such incidents are to be recorded and investigated.

The experience of Northern Ireland would suggest that the more power that is exercised by any agency, the greater the need for it to be overseen. This can be achieved through more avenues than just the political and democratic institutions of the legislature, executive and judiciary – a free and independent press, informed non-governmental organisations, and a legal profession with integrity. Yet it can often be these very sectors that come under pressure at times of crisis.

**2\_ Protection of due process** – is vital to the security and stability of society.

Defending the rights of individuals through due process is central to the protection and security of society as a whole. This lies at the root of international human rights law, with the premise that all human beings are born free and equal in dignity and rights.

The rule of law and principles of due process exist to ensure that the suspects who are arrested, detained, and imprisoned are indeed guilty of the crimes alleged. The system breaks down if people engaged in criminal acts are not arrested, or if the wrong suspects are imprisoned. Such abuses undermine public confidence in the rule of law.

**Our experience:**

- 1\_ Long, or indeterminate, pre-trial detention/internment is unacceptable and ultimately a failure.
- 2\_ Ill-treatment of detainees and prisoners must be actively prevented and allegations of cruel treatment must be immediately and independently investigated.
- 3\_ False allegations of torture or ill-treatment can be easily avoided by:
  - a. ensuring independent medical examinations;
  - b. immediate and confidential access to legal advice and to family;
  - c. audio and video recording of interrogations;
  - d. unannounced visits to places of detention by independent observers.
- 4\_ Coercive interrogations – which can lead to ill-treatment or a subsequent miscarriage of justice – can also be easily prevented by:
  - a. a mixture of the measures outlined above;
  - b. proper police training;
  - c. detailed custody records;
  - d. courts' refusal to accept confession evidence secured in this way;
  - e. serious penalties for wrongful behaviour.

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- 5\_ The principle of 'innocent until proved guilty', which is the foundation of any good criminal justice system, requires that suspects be allowed to retain their right to silence and their right not to self-incriminate.
  - 6\_ Trials should be prompt and avoid 'internment by remand'; bail should be available for all but the most serious of charges.
  - 7\_ Trials should be fair. Ensure:
    - a. equality of arms with full disclosure of evidence to defence solicitors;
    - b. speedy access by the accused to independent legal advice;
    - c. an adequate legal aid system.

### **3\_ Equality and non-discrimination** – crucial principles for security and good community relations.

In Northern Ireland, and in many other conflict situations, there are important societal divisions. These divisions are sometimes caused by human rights abuses, but nearly always further exacerbated by political violence.

This is why all international and regional standards emphasise equality and non-discrimination as core human rights principles necessary for a just and peaceful society.

A society that treats its individual members respectfully and respects diversity, will actively tackle the inequalities, social exclusion, and marginalisation that often foster anger and violence.

**Our experience:** A comprehensive human rights programme which addresses any underlying causes of conflict is likely to be more effective than a punitive policy in response to conflict. This could involve tackling a legacy of poverty, educational disadvantage or discriminatory behaviour.

### **4\_ Domestic efforts to protect human rights in times of crisis need to be backed by international measures.**

If a government perceives a need to introduce measures that erode fundamental human rights to counter violence, then domestic legislation and campaigning alone is often not enough to halt its introduction or stem the effects.

**Our experience:** From the early 1990s onwards, CAJ and others turned frequently to external scrutiny bodies and to the international community for help. These interventions had clear positive consequences for the protection of rights in Northern Ireland. They came from a range of respected international human rights non-governmental organisations and oversight bodies such as the:

- UN Committee Against Torture and the European Committee for the Prevention of Torture;
- UN Committee for the Elimination of Racial Discrimination; and the
- European Court for Human Rights.

Many states do not like to be criticised by the international community. They do not like to have their security tactics and resultant human rights abuses subjected to the glare of international scrutiny.

Sometimes international pressure can be much more influential than local efforts, though of course such pressure is best exerted when it is informed by local knowledge and expertise.

The fact that such respected organisations were citing the same international standards, and making the same criticisms, as local groups such as CAJ, also gave greater credibility and legitimacy to local human rights efforts.

## **5\_ Tragedies of the past must be confronted** – comprehensive discussion and action is needed to secure lasting peace and stability.

Dialogue between former political enemies is underway in Northern Ireland, and this will hopefully allow for the development of a shared vision of a more just and peaceful society. But Northern Ireland has a long way to go and one of the biggest challenges still facing society is how to handle the tragedies of the past.

Official inquiries are continuing. Police investigations into the 3,600+ deaths are underway and efforts are being made privately and publicly to engage in a more comprehensive debate about dealing with the past.

**Our experience:** CAJ has worked for many years with families who have lost loved ones during the conflict. We have campaigned on individual cases, worked to improve the inquest system, and successfully took cases to the European Court of Human Rights.

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We believe that any proposal for dealing with the past must build on these experiences. It must properly engage with the rights of victims and others, in accordance with domestic and international human rights standards.

While CAJ's mandate relates only to the actions of the state, we believe that any examination of the past must take place in the context of a full and informed examination of the actions of all relevant parties. Obvious human rights principles for consideration include:

- Independence
- Transparency
- Accountability
- Compliance with the European Convention on Human Rights
- Avoidance of impunity or blanket amnesties
- A voluntary process involving acknowledgement of wrong-doing
- Maintenance of the integrity of the criminal justice process
- Compliance with international human rights law
- Equality of treatment for all victims and a clear and public outcome.

*A full report of the visit to Belfast by the Eminent Jurists Panel - including a summary of all oral and written testimony submitted to the Panel - is available from CAJ. The report includes material from practising solicitors, senior police officers, and individual victims of human rights abuses. This executive summary is a reflection by CAJ on the key lessons arising from that visit, but it is highly recommended that those interested avail of the full report - see [www.caj.org.uk](http://www.caj.org.uk)*

### Eminent Jurists Panel

The Eminent Jurists Panel is chaired by Arthur Chaskalson, former Chief Justice of South Africa. The jurists are working on a global study to examine questions of terrorism, counter-terrorism, and human rights. Justices Chaskalson and Zaffaroni, visited Belfast from 19th-21st April 2006 to receive direct testimony relevant to their study. The secretariat of the Panel is provided by the International Commission of Jurists. The Panel includes:

Georges Abi-Saab (Egypt)	Robert K Goldman (USA)
Hina Jilani (Pakistan)	Vitit Muntarbhorn (Thailand)
Mary Robinson (Ireland)	Stefan Trechsel (Switzerland)
Raul Zaffaroni (Argentina)	

### Committee on the Administration of Justice

The CAJ is an independent, cross community human rights group working to protect and uphold human rights in Northern Ireland. More information on the organisation and full details of its publications and other activities can be found online at [www.caj.org.uk](http://www.caj.org.uk)

### Further information

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The tragic events of 11th September 2001 in New York and Washington unleashed a “war on terror” with serious human rights consequences around the world. In the wake of 9/11, people around the world are asking themselves what is the appropriate response to terrorism? How does one effectively counter terrorist acts? Is the torture of suspects ever allowed?

It was to address these kinds of questions that a global study entitled “Terrorism, Counter-Terrorism and Human Rights” was launched. The International Commission of Jurists invited a group of jurists to travel to more than a dozen countries to learn of past and current experiences of terrorism and counter-terrorism, and to produce a report with recommendations. The Eminent Jurists Panel visited Northern Ireland in April 2006 to learn what, if any, lessons could be shared with others. Their visit was facilitated locally by the Committee on the Administration of Justice (CAJ), a cross community human rights organisation working to uphold human rights in Northern Ireland since 1981.

CAJ subsequently prepared a 120 page report bringing together much of the oral and written testimony heard by the Panel during their visit to Belfast. This executive summary sums up the lessons that CAJ believes Northern Ireland has to offer to the global debate. Please contact our office below if you would like to receive a copy of the full report which sets the recommendations in a much fuller context.

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