

The War on Terror: Lessons from

This month sees the launch of CAJ's most recent report 'War on Terror: Lessons from Northern Ireland', in which the organisation takes a look at how the conflict in Northern Ireland offers positive and negative lessons to the current global debate on terrorism, counter-terrorism and human rights.

As readers of Just News will know, CAJ was the local host some time ago for a visit to Belfast by the Eminent Jurists Panel. The Panel was invited by the respected international human rights group, the International Commission of Jurists, to undertake a global survey in the wake of 9/11. Their remit was to examine how -in human rights terms- countries around the world were responding to, or should be responding to, the threat of terrorist violence. Most of the countries visited were countries still in the thrall of serious violent conflict, or countries who were leading the "war on terror" at an international level. Countries like Colombia and Sri Lanka were to be visited alongside the UK and the USA.

Initially the Eminent Jurists Panel needed to be convinced that a visit to Northern Ireland, as an area emerging from violent conflict, would be relevant. However by the time the chair of the Panel, former South African Chief Justice Arthur Chaskalson, and his colleague Raul Zaffaroni (of the Argentinean Supreme Court), left, they were clear that Northern Ireland had much to offer – positively and negatively – to their study. The final global study is reaching completion and its publication can be expected later in 2008.

CAJ was clear almost from the outset that there would be a value in producing a NI-specific publication, and this is the report being launched this month. The report carries a detailed synopsis of all the written and oral submissions made to the Panel, and draws out a number of recommendations which CAJ believes have wider relevance.

The report incorporates testimony received by the Panel from a wide range of contributors. Legal academics, legal practitioners, international non-governmental human rights groups, and representatives of the Law Society, Bar Council and the judiciary all met with the Panel and shared their insights and experience. The Director of Public Prosecutions, representatives of the Court Service, and the Chief Constable and other senior officers of the Police Service, gave the perspective of those agencies charged with "managing" the conflict.

The police were able to make particularly thoughtful responses since they were able to compare past and current policing attitudes to the appropriate balance to be struck between "security" issues and "human rights" protections. The Chief Constable explicitly indicated that some of the measures in the past had proved counter-productive from a police perspective, and he and his officers welcomed the more recent emphasis on human rights as a central tenet of policing.

But, not surprisingly, the most powerful testimony tended to come from individuals talking about the human rights abuses they, or loved ones, had suffered. Different sessions were directed at themes such as internment and ill-treatment, the creation of suspect communities, and – most emotional of all – the right to life. In the latter gathering, more than sixteen families attended the session. Despite their diversity – they had lost loved ones at the hands of all the different armed groups – they told their respective stories with dignity and respect for the hurt of others in the same room. In 90 minutes, their stories were necessarily very abbreviated, but the message was loud and clear – victims need answers and some truth telling process must be started.

As noted, the report contains a detailed synopsis of all this disparate testimony. It also, however, argues that Northern Ireland has a lot of experience to share with elsewhere. This is a small jurisdiction, but the number of deaths per capita is shockingly high; the conflict, and the response to conflict, has raged for a very long time – extraordinary legislation has been in place since 1921; and yet, at the same time on the positive side, blueprints have been developed in more recent years about the kind of human rights and equality building blocks that might underpin a fairer and more peaceful society.

One of the building blocks that we might want to share with others is that there is an absolute need to uphold the rule of law during any conflict so as to ensure the safety and security of its citizens and all within its territory. While this may have been the supposed objective of successive emergency measures, no such security was secured during the height of the conflict, and the report cites example after example about how those very security measures often proved counter-productive. Ill-treatment of detainees, harassment of defence lawyers, extended pre-trial detention, limitations on the right to due process all compounded the security threat rather than assuaging it.

In Northern Ireland- “A Synopsis”

CAJ's report clearly details that a balance should be maintained between the rights of the individual and the rights of society as a whole, and that these apparently competing claims are in fact inter-related and complementary. So, this requires that whatever measures are introduced, they must be *legal, necessary and proportionate*.

The report also argues that in order for collective and necessary security measures to be implemented, a sound and independent criminal justice system, together with legislation and policy aimed at protecting human rights need to be in place in order to adequately protect individuals. Reference is made in the report to the enactment of the Human Rights Act (2000) which although it came too late for many, now sets out the obligations and duties of the police and other bodies in upholding human rights. The report recognised that the Human Rights Act is “*a major advance, and an earlier passage of such legislation might have significantly reduced the level of human rights abuses*”.

Moreover, the report deals at length with the need not only for a sound legislative framework to be adopted but also addresses the importance that society's institutions fully comply with their human rights obligations. For example policing is frequently discussed through the report as being a very contentious issue. The police were often accused of discriminatory stop and search practices, lethal force and ill-treatment, and the report reflects upon the thinking that led to the police being re-modelled in order to be more representative, human rights orientated and accountable. This is clearly an area where we have much – positively and negatively – to share with others. Practical changes like a Code of Ethics for police officers, and one that is tied into disciplinary regulations, ensures that the language of change and human rights compliant policing is given real effect.

In addition, the report pinpoints the importance of due process being adhered to even – or perhaps especially – in time of conflict. As the report notes, it may be blindingly obvious but – “to defend the rule of law it is necessary to uphold the rule of law”. People need to retain confidence in the agencies established to protect them, and attacks on traditional liberties undermine that confidence. The experience of Northern Ireland was clearly that long, or indeterminate, pre-trial detention/internment is unacceptable. It also proved counter-productive. So, why have these lessons been totally ignored in Guantanomo or, closer to home, in the parliamentary debates about extensions to pre-charge detention?

Interestingly, the report has to record mixed reactions with regard to the impact of international human rights scrutiny. Over and over again, individuals and organisations cited the great benefits that international scrutiny had secured for Northern Ireland. Pronouncements by the United Nations, the European Court on Human Rights, and respected international human rights NGOs, frequently had a direct and positive impact on local developments. Moreover, the fact that well respected international bodies were holding the government to the same standards as were local human rights groups like CAJ, gave greater credibility to local efforts, thereby also indirectly influencing domestic debates. International criticisms of the dramatic increase in allegations of psychological ill-treatment in the early 90s, led to an immediate drop in complaints. It is rare to see this level of cause and effect, but people in Northern Ireland can testify to the value of international human rights interventions.

At the same time, it is difficult to be entirely positive about the level of scrutiny afforded by external agencies. The report details the persistence of emergency and special legislation – the Special Powers Act introduced in 1921 was only repealed in the early 70s when a series of Emergency Provision Acts (only applicable to NI) and then the Prevention of Terrorism Acts (applicable to the whole UK) were introduced. Whilst routinely “reviewed” they were normally renewed, or indeed added to, rather than removed or weakened. And now these measures are being replaced with a series of Terrorism Acts (UK wide, with some NI particularities). Yet at no time has any inter-governmental body at UN or European level substantively challenged the right of the UK to determine that the supposed national security threat has required the maintenance of special measures for nigh on ninety years!

Northern Ireland provides the clearest possible example of the trend commented upon by UN expert Leandro Despouy to the effect that “*what was temporary, becomes definitive; what was provisional, constant; and what was exceptional, permanent – which means that exception becomes the rule*”. This is obviously one important lesson that we should share with others.

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