



**a bill
of rights
for
northern
ireland**



Proposed by



Committee on the Administration of Justice

The **Committee on the Administration of Justice (CAJ)** is an independent civil liberties organisation formed in 1981 to work for the highest standards in the administration of justice in Northern Ireland. CAJ is affiliated to the **Fédération Internationale des Droits de l'Homme**, an international human rights organisation which has consultative status at the United Nations.

CAJ's membership is drawn from both sections of the community and includes lawyers, students, community workers, trade unionists, unemployed people and academics. The CAJ is opposed to the use of violence to achieve political goals in Northern Ireland.

By carrying out research, holding conferences, lobbying politicians, issuing press statements, publishing pamphlets, circulating a monthly bulletin and alerting the international human rights community, the CAJ hopes to stimulate awareness and concern about justice issues in Northern Ireland and encourage the adoption of urgently-needed safeguards. In the Committee's view, not only are abuses of civil liberties wrong in themselves but, in the Northern Ireland context, they hinder the peaceful resolution of the conflict.

Open meetings for CAJ members and the public are held every two months to discuss a variety of civil liberties issues. Sub-groups work on an on-going basis on areas such as policing, Bill of Rights, emergency laws, international standards, use of lethal force by the security forces, juvenile justice, prisons and racism.

Membership of the Committee

Membership entitles you to receive CAJ's monthly civil liberties bulletin **Just News**, to take part in the work of the sub-groups and to use the CAJ documentation library and clippings service.

If you would like to join CAJ or find out more about its activities, please contact:

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PREFACE

This document represents the latest thinking of the Committee on the Administration of Justice as to what should be contained in a Bill of Rights for Northern Ireland. Like most of the CAJ's publications it has been compiled by a sub-group of the organisation and approved by the Executive Committee. The individuals most closely connected with its content have been Christine Bell, Brice Dickson, Donall Murphy, Martin O'Brien and Fionnuala Ní Aoláin. We would like to thank Liz Martin and Michael Ritchie for their work on production and to Neal Alexander (Community Training & Research Services) for his cover design.

The CAJ believes fervently that a Bill of Rights is essential for the protection of human rights and that it can make an important contribution to the creation of a more just and peaceful society. It has therefore looked at Bills of Rights in other countries and at international agreements on human rights with a view to selecting those provisions which are most suited to the Northern Ireland context. Nearly every paragraph of the Bill contains an obligation to which the government of the United Kingdom has already agreed to adhere on the international plane, but occasionally we have inserted other obligations where we think there is a clear need for them.

The Bill is set out Article by Article, with notes at the end of each Article explaining some of the words used and referring the reader to equivalent provisions in international agreements. We have tried to keep the language as non-technical as possible.

The document is a follow-up to CAJ Pamphlet No. 17, **Making Rights Count**, which was published in October 1990. Readers will continue to find that pamphlet useful when looking for explanations as to why a Bill of Rights is necessary in Northern Ireland and for the views of political parties and other interested groups. Since its publication the CAJ has continued to consult with a wide range of people both in Northern Ireland and elsewhere so that an improved Bill could be prepared. We would welcome further comments on the current document, which can be sent to:

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PREAMBLE

However Northern Ireland is governed, these are the minimum rights which are to be guaranteed by law to all persons in Northern Ireland.

Commentary on the Preamble

- **However Northern Ireland is governed:** The CAJ intends this Bill of Rights to apply whatever constitutional arrangements are in place at any particular time for governing the area known as Northern Ireland. The organisation takes no position on what the constitutional status of Northern Ireland should be.
- **minimum rights:** The rights contained in this Bill are seen by the CAJ as being the minimum necessary for justice to prevail in Northern Ireland. The CAJ expects other laws to be passed to supplement the protection of rights afforded by the Bill. In particular, the CAJ does not wish to see the Sex Discrimination (NI) Order 1976 or the Fair Employment (NI) Acts 1976-1989 diluted in any way; indeed it believes that those pieces of legislation should be strengthened. It also wishes to see the introduction of an effective piece of legislation on racial discrimination, inclusive of the rights of Travellers. The rights of homosexuals and of prisoners deserve greater protection also.
- **guaranteed by law:** The CAJ does not hold a collective view on precisely how the Bill of Rights should be made a part of the law in Northern Ireland. Article 18 of the Bill indicates the effect of the Bill of Rights on other laws, whether they come into force before or after the Bill. Article 20 suggests a way in which the Bill can be significantly "entrenched" in the legal system by making it difficult to amend. Like other documents on human rights, this Bill is intended to be binding on the state (in all its manifestations) in its relationships with persons in Northern Ireland. It is not intended to be directly binding on other persons in Northern Ireland, although if those persons, once detected, are permitted by the state to violate with impunity other people's rights as set out in this Bill, the state itself is to be deemed to have failed to guarantee by law those rights. The Bill is therefore intended to place upon the state an obligation to ensure that the law in Northern Ireland fully complies with the provisions in the Bill. Article 18(1) is designed to oblige judges to interpret other laws with this obligation in mind.
- **all persons:** Where the context permits, "person" in this Bill of Rights is intended to include "legal" persons (such as companies) as well as human beings. The CAJ takes no position on whether an unborn foetus is a "person" for the purposes of any of the provisions in this Bill of Rights.
- **in Northern Ireland:** The Bill of Rights must benefit every person who at any particular time is in the area known as Northern Ireland. Persons who ordinarily reside in Northern Ireland but who are out of the area at a particular time are intended to have their rights in Northern Ireland protected too.

ARTICLE 1

1. Every person has the right to life.
2. Deprivation of life shall not contravene paragraph (1) of this Article when it is the result of the use of force which is no more than absolutely necessary to preserve other human life.
3. In no circumstances shall a court punish a person for an offence with a sentence of death.

Commentary on Article 1

- **Article 1(1)** is similar to the first parts of Article 3 of the Universal Declaration of Human Rights (1948), Article 6(1) of the United Nations' International Covenant on Civil and Political Rights (1976) and Article 2(1) of the European Convention on Human Rights and Fundamental Freedoms (1953).
- **life:** The CAJ takes no position on whether the law in Northern Ireland should permit abortion or euthanasia.
- The test in **Article 1(2)** is stricter than both the current domestic law of Northern Ireland (section 3(1) of the Criminal Law Act (NI) 1967) permits "such force as is reasonable in the circumstances" and the equivalent provision in Article 2(2) of the European Convention on Human Rights and Fundamental Freedoms (which talks of "no more force than is absolutely necessary" but allows this to be used for a variety of purposes, such as to effect a lawful arrest). The test is deemed appropriate because in the CAJ's view the existing standards have not been effective in reducing the large number of controversial shooting incidents involving the state authorities in Northern Ireland.
- **Article 1(3)** is a categorical prohibition on the death penalty, inserted in the Bill in order to counter any argument that Article 1(2) still leaves room for the imposition of such a penalty. The CAJ does not believe that any Bill of Rights should countenance the possibility that such a punishment might be used.

ARTICLE 2

Every person has the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, and not to be sentenced to an indeterminate period of imprisonment.

Commentary on Article 2

- **Article 2** is largely based upon the absolute protection currently provided by Article 3 of the European Convention on Human Rights and Fundamental Freedoms.

- **sentenced to an indeterminate period of imprisonment:** The CAJ has added this prohibition on indeterminate sentencing because it believes that for a prisoner not to know the precise number of years which he or she may have to spend in prison is an injustice on a par with cruelty, and we intend to include within this prohibition indefinite hospitalization orders (such as those affecting the mentally ill). To date, unfortunately, the bodies which enforce international human rights documents have not viewed "life" sentences in this way.

ARTICLE 3

1. Subject to Article 17, in the event of a person being killed as a result of the actions or omissions of another person, including persons acting in an official capacity, the close relatives and dependents of the person killed have the right to adequate compensation.
2. At an inquest into a death, the close relatives and dependents of the dead person have the right to adequate legal assistance, including representation, free of charge.
3. Subject to Article 17, every person who has been injured or whose property has been lost or damaged as a result of the actions or omissions of persons acting in an official capacity has the right to adequate compensation.

Commentary on Article 3

- **Article 3(1)** is designed to counter arguments that a death, as opposed to an injury, does not attract the right to compensation. It is located at this point in the Bill of Rights because it follows closely upon the right to life conferred by Article 1. The paragraph is made subject to Article 17 because the CAJ realises that specific laws will need to be in place to cater for such cases as where a man kills his wife and then seeks compensation. But, as with all of the qualifications allowed by Article 17, we envisage that such laws will be wholly exceptional. To avoid doubt they should contain a section stating that they have been made in accordance with the constraints of Article 17.
- **persons acting in an official capacity:** This phrase is intended to include, amongst others, police officers and soldiers.
- **adequate compensation:** The compensation should be adequate to the recipients' needs, regardless of the character or previous conduct of the deceased.
- **Article 3(2)** has no exact comparison in any existing national or international human rights document but has been deliberately inserted here because of the present patent injustice whereby relatives etc of deceased persons cannot obtain legal aid for representation at inquests into suspicious deaths. The CAJ believes the provision is best placed here because it closely follows the right to life conferred by Article 1, thereby emphasising the need for proper measures to ensure the protection of human life.
- **Article 3(3)** overlaps with others in the Bill of Rights and is intended to put beyond doubt a person's entitlement to compensation from the state for unjustified state action. It is partly based on Article 13 of the European Convention on Human Rights and envisages, for example, the strengthening of the rights recognized in decisions of the Ombudsman in Northern Ireland. It is made subject to Article 17 because the CAJ realises that some actions or omissions of persons acting in an official capacity, even though they cause injury or loss, will be absolutely necessary and manifestly justifiable in a free and democratic society.

ARTICLE 4

1. Every person has the right to a standard of living and to a clean and healthy environment adequate for his or her health and well-being.
2. Subject to Article 17, every person has the right to a home.

Commentary on Article 4

• The paragraphs in **Article 4** confer economic and social rights. The CAJ believes that a Bill of Rights should not be confined to civil and political rights because in most people's minds economic and social (and cultural) rights are at least as important. The idea that a state should guarantee only civil and political rights is now outdated: to our mind that is the main failing of, on the one hand, the US Bill of Rights (i.e. the first 10 amendments to the US Constitution) and, on the other, the European Convention on Human Rights. In the aftermath of the Second World War, when one of the United Nations' first acts was to agree the Universal Declaration of Human Rights, the notion of human rights was not divided into the two separate concepts. It was mainly as a result of the Cold War that the West tended to focus on civil and political rights (which the UN enshrined in an International Covenant in 1966, in force by 1976) while the East focused on economic and social rights (enshrined in another International Covenant in 1966, also in force by 1976). Today the human rights documents of the Conference on Security and Co-operation in Europe do not make the distinction. The CAJ recognizes that economic, social and cultural rights are of a different order from civil and political rights, if only because they are more obviously dependent upon the financial resources of the state and are more difficult for judges to delimit. But civil and political rights cost the state money as well and judges are frequently faced with equally difficult adjudicatory tasks in the area of, say, social security law.

• **right to a standard of living adequate for his or her health and well-being:** This right is already contained in Article 25 of the Universal Declaration of Human Rights and Article 11 of the UN's International Covenant on Economic, Social and Cultural Rights. It is also similar in tone to provisions in the Council of Europe's European Social Charter. Although the Universal Declaration is not a treaty which is binding in international law, the Covenant and the Charter are such treaties and in the eyes of international law both the United Kingdom and the Republic of Ireland have agreed to be bound to adhere to their provisions. The individual circumstances of the claimant of such a right will need to be taken into consideration by any court adjudicating upon the issue. In particular, a person who is a carer may well be thought to be entitled to certain special benefits, such as respite time and reimbursement of expenses.

• **standard of living:** We take this phrase to include sustenance (i.e. food and drink), clothing and reasonable security from unprovoked attacks.

• **right to a clean and healthy environment adequate for his or her health and well-being:** The CAJ wishes to include this right because it is now abundantly clear that unless the environment is protected people will not be able to enjoy many of the other rights conferred by this Bill. We believe that individuals (and, by virtue of Article 19(1), groups) should be able to claim this right in a court of law, thereby forcing the state to take proper measures to ensure an adequate degree of protection against environmental pollutants.

• **Article 4(2)** is inserted in order to avoid any doubt over the extent of the meaning of "standard of living" in Article 4(1). The CAJ believes that the right to a home is a basic human entitlement, though it concedes that the right must be made subject to Article 17 so that laws can be passed concerning ownership and occupation rights of particular homes. We do not intend that Article 17 should be used to restrict unduly the quality of accommodation to which a person is entitled. In particular, we envisage every home having adequate space and basic services, with the occupier having reasonable security of tenure.

ARTICLE 5

1. Every person has the right to education.
2. Every person has the right to full financial support for all aspects of his or her primary and secondary education, and technical, professional and higher education and training shall be made generally available and financially accessible to all.
3. Every person has the right to education and training directed to the full development of his or her skills, ability and personality, to the strengthening of respect for human rights and fundamental freedoms and to the promotion of understanding, tolerance and friendship among all groups, regardless of race, religion or gender.

Commentary on Article 5

- **Article 5(1)** is based on Article 26 of the Universal Declaration of Human Rights and Article 2 of Protocol 4 to the European Convention on Human Rights. Clearly a person cannot fully enjoy many of his or her other rights unless he or she has received education.
- **education:** By this we mean nursery, primary and secondary education for children and young persons aged 2 to 18. The education should embrace all the main subjects necessary for an understanding of the world in which the child or young person lives and should comply with the requirements of Article 5(3) of this Bill.
- **Article 5(2)** is intended to make it clear that education should be provided by the state primarily to all children and young persons aged 2 to 18, but we do not exclude its provision to older persons who may not have had the opportunity to benefit from the educational provision at an earlier age.
- **all aspects of his or her education:** These words are intended to ensure that some "extra" school activities are not made available only to children whose parents can afford to pay for those activities.
- **higher education:** This refers to post-secondary education, whether at an University or a College of Further Education.
- **training:** This is intended to refer primarily to job-related education, the aim of which is to prepare people for employment.
- **Article 5(3)** is based on Article 26(2) of the Universal Declaration and is intended to be broad enough to allow for the continuance of state-funded denominational schools as well as "integrated" schools in Northern Ireland. The CAJ believes that the child's own personality should be the focal point for development in all schools.

ARTICLE 6

Every person under the age of 18 in Northern Ireland has all the rights contained in the United Nations' Convention on the Rights of the Child.

Commentary on Article 6

- The United Kingdom ratified the United Nations' Convention on the Rights of the Child at the end of 1991. This Article is intended to confirm that, in cases of doubt, the law of Northern Ireland is to be interpreted in a way which makes it comply with that Convention.

ARTICLE 7

Subject to Article 17, every person has the right to freedom from interference with his or her private and family life, home and correspondence.

Commentary on Article 7

- Article 7 is based on Article 8(1) of the European Convention on Human Rights and Fundamental Freedoms and represents the first attempt to introduce the right of privacy into the law of any part of the United Kingdom. The right of privacy is recognized in the law of many other countries, including the United States of America, where its existence has been inferred from the Constitution. It is not expressly mentioned in the Constitution of the Republic of Ireland; but the courts there have recognized it as one of the "unenumerated" rights.

ARTICLE 8

Subject to Article 17, every person has the right to marry and to divorce.

Commentary on Article 8

- Article 8 is based on Article 12 of the European Convention on Human Rights and Fundamental Freedoms, except that we have specifically included the right to divorce, which the European Court of Human Rights has so far held is not protected by Article 12. By making the Article subject to Article 17 we are acknowledging that for the protection of all concerned there have to be some restrictions on the right to divorce.

ARTICLE 9

1. Every person has the right to freedom of conscience and of religion, including the right to no religion.

2. Subject to Article 17, the right in paragraph (1) includes the freedom to manifest beliefs, or lack of them, in worship, teaching, practice and observance, whether alone or in community with others and whether in public or in private.

Commentary on Article 9

- Article 9 is based on Article 9 of the European Convention on Human Rights and Fundamental Freedoms and on Article 18(1) and (3) of the United Nations' International Covenant on Civil and Political Rights. For the avoidance of doubt, the CAJ has expressly included the right to be atheistic; this is the position under the United Nations' Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief, 1981.

ARTICLE 10

1. Subject to Article 17, every person has the right to freedom of expression and to obtain information.
2. Subject to Article 17, every person has the right to take part in cultural life.

Commentary on Article 10

- **Article 10(1)** is a simplified version of Article 10(1) of the European Convention on Human Rights and Fundamental Freedoms and of Article 19(2) of the United Nations' International Covenant on Civil and Political Rights. On the face of it there could well be a clash between the rights protected by Article 10(1) and the right to a private and family life guaranteed by Article 7 of this Bill of Rights. As both provisions are subject to Article 17 it will be up to Parliament to decide how best to arrive at an accommodation between them.
- **Article 10(2)** is based on Article 15(1)(a) of the United Nations' International Covenant on Economic, Social and Cultural Rights.

ARTICLE 11

1. Subject to Article 17, every person has the right to freedom of peaceful assembly and association with others.
2. Every person has the right to form and to join trade unions and professional bodies for the protection of his or her employment interests.
3. Every employed person has the rights to a fair wage, to equal remuneration for work of equal value, and not to be unfairly dismissed from his or her employment.

Commentary on Article 11

- **Article 11(1)** is based on the first part of Article 11(1) of the European Convention on Human Rights and Fundamental Freedoms and on Article 21 and the first part of Article 22(1) of the United Nations' International Covenant on Civil and Political Rights.
- **assembly and association:** These terms are intended to include demonstrations, marches, parades and processions.
- The first part of **Article 11(2)** is based on the second part of Article 11(1) of the European Convention on Human Rights and Fundamental Freedoms and on the second part of Article 22(1) of the United Nations' International Covenant on Civil and Political Rights. The right is here placed in a separate paragraph because we deem it to be important and because we wish to exclude it from the operation of the general "limitation clause" in Article 17.
- **professional bodies:** In the second part of the paragraph we have mentioned professional bodies as well as trade unions because we believe that membership of these is also deserving of protection.
- **the rights to a fair wage and to equal remuneration for work of equal value:** We have included these rights in Article 11(3) because we believe they are fundamental to the functioning of a fair society. They are already recognized by Article 4 of the Council of Europe's European Social Charter, in force as from 1965, and by Article 7(a)(i) of the United Nations' International Covenant on Economic, Social and Cultural Rights.
- **the right not to be unfairly dismissed:** We have included this right in Article 11(3) because, although it is not expressly recognized by international legal provisions, the CAJ believes it is fundamental to the functioning of a fair society and it is in any event already recognized in the domestic law of Northern Ireland.

ARTICLE 12

1. Subject to Article 17, every person has the right to take part in the public affairs of Northern Ireland, both directly and through freely chosen representatives.

2. Every person aged 18 or over who is resident in Northern Ireland in accordance with the law has the right to vote and to be elected at genuine periodic elections. Elections shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

Commentary on Article 12

- **Article 12(1)** is based on Article 25(a) of the United Nations' International Covenant on Civil and Political Rights.
- Most of **Article 12(2)** is based on Article 25(b) of the United Nations' International Covenant on Civil and Political Rights.
- **genuine elections:** The CAJ is in favour of elections based on proportional representation but is not insisting upon this in this paragraph.
- **aged 18 or over:** We have selected 18 as the age at which the rights vest in every person because at the moment that is the acknowledged age of majority in Northern Ireland (although at present Members of Parliament have to be at least 21).

ARTICLE 13(1-2)

1. Subject to the remaining paragraphs in this Article, every person has the right to liberty and security.

2. A person may be deprived of his or her liberty if he or she is reasonably suspected of being about to commit, or of being in the process of committing, or of having committed, a specific offence of a serious nature.

Commentary on Article 13(1-2)

- **Article 13(1)** is based on the first few words of Article 5(1) of the European Convention on Human Rights and Fundamental Freedoms. For the sake of clarity we have excised the words "of the person" which are included in Article 5(1). We believe that it is the responsibility of the state to ensure that persons in the state are reasonably safe from illegal deprivation of liberty and from attacks on their individual security.
- This would be an appropriate place in the Bill of Rights for a provision expressly outlawing the issuing of exclusion orders under the Prevention of Terrorism Act, whereby a person can be excluded from any part, or the whole, of the United Kingdom. These orders mostly affect persons living in Northern Ireland who want to travel to Great Britain and the CAJ vehemently opposes their use. However, this Bill of Rights is intended to be binding upon whichever authority governs Northern Ireland and to confer rights upon people within or ordinarily resident in Northern Ireland whenever their rights are violated within Northern Ireland; it cannot therefore deal with exclusion orders when they take effect outside Northern Ireland.
- **Article 13(2)** in effect summarises the provisions in Article 5(1)(c) of the European Convention on Human Rights and Fundamental Freedoms, except that it is confined to reasonable suspicion of "a specific offence of a serious nature". The CAJ believes that liberty is such an important right that a person should be deprived of it only in the most limited of circumstances. It does not think it should be lawful for a person to be arrested on such a vague pretext as that he or she is reasonably suspected of being concerned in the commission, preparation or instigation of "acts of terrorism", which is what section 14(1)(b) of the Prevention of Terrorism (Temporary Provisions) Act 1989 currently authorises. A greater degree of specificity as to the nature of the offence should be required and only "serious" offences should qualify.
- **offence of a serious nature:** The concept of a "serious arrestable offence" is one already used in the Police and Criminal Evidence (NI) Order 1989. We intend the phrase in Article 13(2) to include the offence of not turning up at court if one has been summonsed to do so for an imprisonable offence.

ARTICLE 13(3-4)

3. In exceptional circumstances, a person may be deprived of his or her liberty and detained under strict medical supervision if he or she is known to be suffering from a serious infectious disease or if he or she is of such an unsound mind that he or she is likely to cause serious harm to himself or herself.

4. Every person who is deprived of his or her liberty has the right to be informed immediately of the reasons for the detention and (if not already released) to be brought publicly and within 36 hours before a lawfully established independent and impartial court in order to have the lawfulness of the detention speedily determined. If the court decides that the detention is unlawful the person detained has the right to be immediately released. If the court decides that the detention is lawful the person detained has the right to re-apply to the court for an order of release if there is evidence of a material change of circumstances and in no case may a person be detained for more than 96 hours without being charged or released.

Commentary on Article 13(3-4)

- **Article 13(3)** partly reflects the grounds for valid detention mentioned in Article 5(1)(e) of the European Convention on Human Rights and Fundamental Freedoms. The CAJ does not believe that there should be detention of persons of unsound mind, alcoholics, drug addicts or vagrants unless those persons fall into the categories mentioned in Article 13(2) or (3) of this Bill of Rights.
- **Article 13(4)** largely summarises the detailed provisions of Article 5(2) to (4) of the European Convention on Human Rights and Fundamental Freedoms.
- **publicly:** Article 13(4) requires the appearance before a court to be public because the CAJ believes it is a prerequisite of justice that all judicial decisions be open to direct scrutiny by neutral observers.
- **36 hours:** The CAJ prefers to insert a specific time limit of 36 hours because any phrase such as "with all speed" is bound to lead to uncertainty and possibly to abuse. The period of 36 hours is the one currently provided for by the ordinary law on criminal procedure in Northern Ireland - the Police and Criminal Evidence (NI) Order 1989.
- **96 hours:** The CAJ prefers to insert a specific time limit because the word "promptly", which is used in Article 5(3) of the European Convention on Human Rights and Fundamental Freedoms, can lead to uncertainty. The period of 96 hours is the one currently provided for by the ordinary law on criminal procedure in Northern Ireland - the Police and Criminal Evidence (NI) Order 1989 - and in the **Brogan** and **Brannigan** and **McBride** cases the European Court of Human Rights said that detention for longer than four days without being brought before a judge is incompatible with the European Convention.

ARTICLE 13(5-7)

5. Every person who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

6. Every person has the right not to be deprived of his or her liberty as a result of the non-payment of a debt or a fine on grounds of financial hardship.

7. Subject to Article 17, every person lawfully in Northern Ireland has the right to freedom of movement within Northern Ireland and the right to leave and re-enter Northern Ireland.

Commentary on Article 13(5-7)

- **Article 13(5)** is based on Article 5(5) of the European Convention on Human Rights and Fundamental Freedoms and Article 9(5) of the United Nations' International Covenant on Civil and Political Rights. It largely reflects the existing law of Northern Ireland on this point.
- **Article 13(6)** avoids the injustice of a person being sentenced to imprisonment simply because he or she is not financially able to pay a monetary obligation. It does not affect imprisonment where the non-payment results from reasons other than financial.
- **Article 13(7)** is based on Articles 12(1) to 12(3) of the United Nations' International Covenant on Civil and Political Rights.

ARTICLE 14 (1-2)

1. Every person who is in police custody or is being questioned by the police at a police station has the right to see, consult and have present a legal representative and every person under the age of 18 being questioned by the police has the right to have an additional personal representative present during the questioning. Every person taken into police custody or about to be questioned by the police at a police station has the right to be fully and immediately informed of his or her rights under this paragraph.

2. Every person has the right not to be obliged to incriminate himself or herself and a person who remains silent in the face of questioning by the police or in a court has the right not to have that silence presented as evidence in court.

Commentary on Article 14(1-2)

- Although none of the international treaties on human rights expressly refers to the right contained in **Article 14(1)**, it is already well recognized in the ordinary criminal law of Northern Ireland (articles 57 and 59 of the Police and Criminal Evidence (NI) Order 1989 and Code of Practice C issued under that Order). In England and Wales it is also recognized whenever suspects are being questioned after being arrested under the Prevention of Terrorism Act and the CAJ believes that it should be recognized in these cases in Northern Ireland too. The Codes of Practice issued under the Northern Ireland (Emergency Provisions) Act 1991 should embody such recognition. The rights are also contained in the Principles on the Role of Lawyers and in the Standard Minimum Rules for the Treatment of Prisoners, two documents approved by the General Assembly of the United Nations.

- **a legal representative:** Where practicable this representative should be a person chosen by the person in custody or being questioned.

- **Article 14(2)** is intended to counter the effect of the Criminal Evidence (NI) Order 1988, which severely curtails a defendant's right to remain silent in the face of police and court questioning. The European Convention on Human Rights and Fundamental Freedoms contains no provision expressly conferring a right of silence, but Article 14(3)(g) of the United Nations' International Covenant on Civil and Political Rights provides that, in the determination of any criminal charge against him or her, a person shall not be compelled to testify against himself or herself or to confess guilt. In Anglo-Saxon judicial systems the right to remain silent has been the traditional mechanism by which this defence against self-incrimination has been ensured.

ARTICLE 14(3-4)

3. Every person charged with a criminal offence has the right to be presumed innocent until proved guilty beyond all reasonable doubt by evidence openly presented in court.

4. Within six months of being charged with a criminal offence every person has the right to a fair and public hearing by an independent and impartial court established by law. The person has the right to waive this time limit if he or she shows to the satisfaction of the court that there has been inadequate time to prepare a defence.

Commentary on Article 14(3-4)

- **Article 14(3)** is a strengthened form of Article 6(2) of the European Convention on Human Rights and Fundamental Freedoms.
- **proved guilty beyond all reasonable doubt:** The paragraph refers to proof beyond a reasonable doubt because that is the standard required at the moment in all criminal prosecutions in Northern Ireland.
- **openly presented in court:** This phrase is intended to avoid the situation where evidence is submitted secretly or in circumstances not allowing for its full examination.
- The first sentence of **Article 14(4)** is based on the first sentence of Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms but is limited to criminal cases (civil cases are covered by Article 15(1) of this Bill).
- **Within six months:** The CAJ prefers to substitute six months for the phrase "within a reasonable time" because it considers the latter too imprecise and therefore open to abuse.
- **the right to waive this time limit:** The second sentence of the paragraph allows the defendant to apply to have the hearing delayed if more time is needed to prepare a defence, a right which is provided for in Article 6(3)(b) of the European Convention and Article 14(3)(b) of the United Nations' International Covenant on Civil and Political Rights.

ARTICLE 14(5-6)

5. Every person charged with a criminal offence for which, if convicted, he or she could be sent to prison for longer than 12 months has the right, unless he or she chooses to waive it, to be tried by a judge sitting with a jury of 12 randomly selected jurors.

6. Every person charged with a criminal offence has the right to defend himself or herself in court, in person or through adequate legal representation of his or her own choosing, and, subject to Article 17, the right to have this representation provided free of charge.

Commentary on Article 14(5-6)

- **a judge sitting with a jury:** Jury trial is not guaranteed by any international human rights instrument and by few national Constitutions (a well-known exception is Article III(2)(3) of the US Constitution). But as jury trial for serious criminal charges is recognized as a basic right within both the Northern Irish and the English common law tradition, Article 14(5) is intended to ensure equality of treatment for all defendants in Northern Ireland who are charged with an offence for which they can be tried in a Crown Court. The CAJ, while recognizing some of the concerns surrounding jury trial in Northern Ireland at the present time, is quite convinced that the needs of security and of justice in this regard can be met and therefore believes that the right of trial by jury should be available for anyone who, if convicted of the offence in question, could lose his or her liberty for longer than one year.
- **unless he or she chooses to waive it:** Like the right in Article 14(4), the right to jury trial is, the CAJ believes, one of those rare rights which a person should be allowed to waive if he or she so wishes.
- **Article 14(6)** is based on Article 6(3)(c) of the European Convention on Human Rights and Fundamental Freedoms and Article 14(3)(d) of the United Nations' International Covenant on Civil and Political Rights. It leaves open the possibility that very wealthy defendants who are found guilty could be ordered by the court to pay the full costs of the prosecution.

ARTICLE 14(7-8)

7. Every person charged with a criminal offence has the right to examine or have examined in court witnesses aged 18 or over who are giving evidence against him or her and, subject to Article 17, to see the witness personally when they are giving evidence and to know their names. Every such person also has the right to obtain the attendance and examination of witnesses who are giving evidence on his or her behalf under the same conditions as witnesses who are giving evidence against him or her.

8. Every person has the right not to have his or her confession presented as evidence unless the confession was made in the presence of the person's legal representative and in the form of a written statement signed by the person and his or her legal representative. Furthermore, subject to Article 17, every person has the right not to be held guilty of a criminal offence on the basis of a confession presented as evidence unless the confession is corroborated by other evidence presented in court.

Commentary on Article 14(7-8)

- **Article 14(7)** is based on Article 6(3)(d) of the European Convention on Human Rights and Fundamental Freedoms and Article 14(3)(e) of the United Nations' International Covenant on Civil and Political Rights. It deals only with the rights of a defendant in a criminal trial and is intended to be without prejudice to the rights conferred by specific laws on the defendant's legal representatives. We recognize that special provisions may need to be enacted for some child witnesses.
- There is no comparable provision to **Article 14(8)** in international treaties on human rights but the CAJ believes it should be included in the Bill of Rights because of the number of instances in both Northern Ireland and England where persons have been convicted on confessions alone, only to have their convictions quashed at a later date because the confession has been shown to be unreliable.
- **unless the confession is corroborated:** The CAJ approves of the Scottish rule which requires a confession to be corroborated by other evidence before it can be relied upon by a judge or jury.

ARTICLE 14(9-10)

9. Every person has the right not to be held guilty of a criminal offence on account of any act or omission which was not a criminal offence under the law of Northern Ireland or international law at the time when it was committed. Furthermore, every person has the right not to be subjected to a heavier punishment than the maximum which could have been imposed at the time the criminal offence was committed.

10. Every person convicted of a criminal offence has the right to appeal against that conviction and against the sentence imposed for the conviction. In addition, every person who, after an unsuccessful appeal against conviction, alleges that he or she has been the victim of a miscarriage of justice, and who has evidence to support the allegation which was not disclosed or which was, in his or her view, given inadequate consideration at his or her trial, or at the appeal, shall have the right to have the case officially reviewed.

Commentary on Article 14(9-10)

- **Article 14(9)** is based on Article 7(1) of the European Convention on Human Rights and Fundamental Freedoms and Article 15(1) of the United Nations' International Covenant on Civil and Political Rights.
- **Article 14(10)** is based on Article 14(5) of the United Nations' International Covenant on Civil and Political Rights. The CAJ has added the right to have an alleged miscarriage of justice officially reviewed because it believes that the number and seriousness of recent tragedies in this regard, which have seen several people both in Northern Ireland and England spend many years in prison for crimes they did not commit, require a special provision to be included in the Bill of Rights making it much more difficult for such cases to recur.

Article 14 (11)

11. Every person who has been convicted of a criminal offence and unsuccessfully appealed against the conviction but whose conviction has later been reversed, or he or she has been pardoned, on the ground that a new or newly discovered fact shows that there has been a miscarriage of justice, shall have the right to be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time was wholly or partly attributable to him or her.

Commentary on Article 14(11)

• Article 14(11) is almost identical to Article 14(6) of the United Nations' International Covenant on Civil and Political Rights. Again, given the number and seriousness of miscarriages of justice which have occurred in recent years in both Northern Ireland and England, the CAJ believes that a Bill of Rights would be deficient if it did not contain the right to compensation for victims of such injustices.

ARTICLE 15

1. When decisions are taken as to whether a person possesses or may exercise rights or obligations under the civil law, he or she has the right to a fair and public hearing within a reasonable time by an independent and impartial court established by law.

2. Every person who is suing or is being sued under the civil law has the right to represent himself or herself in court and to adequate legal representation of his or her own choosing and this legal representation must be provided free of charge when the merits of the case and the means of the applicant so require.

3. Every person being sued or suing under the civil law has the right to examine and have examined in court witnesses who are giving evidence against him or her, to assess the demeanour of those witnesses when they are giving evidence and, subject to Article 17, to know their names. Every such person also has the right to obtain the attendance and examination of witnesses who are giving evidence on his or her behalf under the same conditions as witnesses who are giving evidence against him or her.

Commentary on Article 15

• The paragraphs in Article 15 confer rights in civil cases in the same circumstances as Articles 14(4), 14(6) and 14(7) of this Bill do in criminal cases. Only Article 15(1) has an equivalent in international law - Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms.

ARTICLE 16

1. Every person has the right to enjoy his or her rights, whether laid down in this Bill of Rights or otherwise in the law, without discrimination on any ground such as gender, race, colour, language, religion, political or other opinion, ethnic or national or social origin, association with a national minority, conviction of a criminal offence, sexual orientation, marital status, property rights, mental or physical disability, age, birth or other status.

2. All persons are equal before the law and every person has the right without any discrimination to the equal protection of the law.

3. Subject to Article 17, persons belonging to ethnic, religious or linguistic groups (including Travellers) shall have the right, in community with other members of their group, to enjoy their own culture, to profess their own religion, or to use their own language.

Commentary on Article 16

- **Article 16(1)** is based on Article 14 of the European Convention on Human Rights and Fundamental Freedoms, Article 2(2) of the United Nations' International Covenant on Civil and Political Rights and Article 2(1) of the United Nations' International Covenant on Economic, Social and Cultural Rights. But it goes further than those provisions in that it extends to all rights, not just to those mentioned in this Bill, and it includes ethnic origins, criminal convictions, sexual orientation (meaning male and female homosexuality), marital status, mental and physical disability and age as grounds upon which it is unlawful to discriminate.
- **Article 16(2)** supplements the previous paragraph by ensuring equality before the law rather than just non-discrimination in relation to rights. It compares with Article 26 of the United Nations' International Covenant on Civil and Political Rights.
- **Article 16(3)** is the same as Article 27 of the United Nations' International Covenant on Civil and Political Rights except that the word "groups" has been substituted for "minorities" and the paragraph is made subject to Article 17 so that limitations can be imposed when these are absolutely necessary.

ARTICLE 17

The rights referred to in Articles 3(1), 3(3), 4(2), 7, 8, 9(2), 10, 11(1), 12(1), 13(7), 14(6), 14(7), 14(8), 15(3) and 16(3) can be subject only to such limits as are shown to be (a) absolutely necessary and (b) prescribed by law and (c) manifestly justifiable in a free and democratic society.

Commentary on Article 17

- This "limitation clause" is comparable to, but less extensive than, the similar clauses found in nearly all charters of rights, and is based in particular on section 1 of the Canadian Charter of Rights and Freedoms of 1982. We have chosen not to follow the practice of the European Convention on Human Rights and Fundamental Freedoms, which is to insert a specific limitation clause immediately after the conferment of the specific rights (see Articles 8(2), 9(2), 10(2) and 11(2) of that Convention). Nor does our Article 17 itemise the sorts of interests which are listed in those paragraphs of the European Convention as justifications for placing a limit on rights, e.g. national security, public safety, the economic well-being of the country, the prevention of disorder or crime, the preventing of disclosures of information received in confidence or the protection of health or morals. Rather than include such a list, the CAJ prefers to focus attention on the requirements that all limitations must be "absolutely necessary" and "manifestly justifiable".
- **shown to be:** We intend the burden of proof to fall on the representatives of the state. The purpose of a Bill of Rights is to confer rights and these should be limited only if the person or body arguing for the limitation can make out a convincing case for it.

ARTICLE 18

1. Every person has the right to have any legislative provision, any rule or regulation and any decision by a judicial or administrative body examined by an independent and impartial court established by law with a view to that court deciding whether the provision contravenes this Bill of Rights and, if the court decides that it does, the court shall declare the provision or decision to be invalid and unenforceable to the extent of such contravention.

2. Any legislation or court decision issued after the enactment of this Bill of Rights shall in cases of doubt be applied in a way that is consistent with the provisions of this Bill of Rights.

3. The guarantee of rights in this Bill of Rights shall not be interpreted as in any way denying the existence of other rights already or subsequently protected by law, provided that those other rights do not conflict with the provisions of this Bill of Rights.

4. A declaration issued under paragraph (3) of this Article shall not affect the legality of actions taken prior to the coming into force of this Bill of Rights but shall otherwise be fully and promptly complied with.

5. A decision taken by a court under paragraph (3) of this Article may be appealed to the Court of Appeal in Northern Ireland.

Commentary on Article 18

- **Article 18(1)** is intended to give clear guidance to judges and administrators when faced with an apparent contradiction between a provision in the Bill of Rights and a piece of legislation or a court decision.
- The purpose of **Article 18(2)** is to make it absolutely clear that this Bill of Rights is not intended to be a fully comprehensive statement of a person's rights in Northern Ireland. The provision compares with section 26 of the Canadian Charter of Rights and Freedoms of 1982 and with the Ninth Amendment to the Constitution of the United States.

- **Article 18(3)** makes it clear that all existing and future laws, whatever their source in Northern Ireland, can be the subject of a challenge under the Bill. The doctrine of Parliamentary sovereignty is therefore curtailed to the extent that Parliament's authority to violate the basic human rights enshrined in the Bill of Rights is removed. The CAJ believes that such rights should not come and go depending on the wishes of particular Parliaments - they are too fundamental to be made into political footballs. The CAJ accepts that all existing courts should be permitted to interpret and apply this Bill of Rights and takes no position on whether cases involving the Bill should eventually be decided exclusively by a special court created for that purpose.

- In order to be consistent with the principle against retrospectivity contained in Article 14(9) of this Bill, **Article 18(4)** makes it clear that a declaration of invalidity is not to operate in such a way as to render illegal something done which, because the Bill of Rights was not at that time in force, was then legal.

ARTICLE 19

1. In the case of a violation of rights as laid down in this Bill of Rights, or elsewhere in the law, which affects a group or class of persons, the group or class has the right to an effective remedy, including compensation, before an independent and impartial court established by law.

2. Every person whose rights as laid down in this Bill of Rights, or elsewhere in the law, are violated has the right to an effective remedy, including compensation, before an independent and impartial court established by law.

3. Every person or group of persons alleging a violation of rights as laid down in this Bill of Rights, or elsewhere in the law, has the right to legal aid when the merits of the case so require.

Commentary on Article 19

• **Article 19(1)** recognizes the importance of permitting class actions, which have been much used in the United States of America to afford remedies in situations where a collection of individuals has each suffered a similar loss but where very few of them would want, or be able, to bring an action on their own account. The CAJ believes that such a remedy should be made more widely available within Northern Ireland so that various types of groups (not necessarily minorities) can take advantage of them. We do not take a position on when a collection of people would constitute a group for this purpose but we have in mind, for example, consumer groups, environmental groups, Travellers, women's groups and civil liberties groups. We do not envisage class actions being submitted to a special court created for the purpose.

• **Article 19(2)** is based on Article 13 of the European Convention on Human Rights and Fundamental Freedoms, with the reference to compensation being taken from Article 5(5) of that Convention. The paragraph also extends beyond Article 13 in that it applies to rights laid down elsewhere than in this Bill of Rights and it requires the remedy to be before an independent and impartial court established by law rather than before "a national authority".

• **Article 19(3)** is intended to ensure that litigants who rely upon this Bill of Rights are entitled to call upon the state for financial assistance. As in the case of legal aid in criminal cases (see the note to Article 14(6)), the court could still order a litigant who is unsuccessful in his or her case to pay the legal costs, although we envisage this occurring very rarely. Of course entitlement to legal aid does not mean that the recipient of the aid may not be required to make a contribution towards his or her legal costs regardless of the outcome of the case being aided.

ARTICLE 20

This Bill of Rights may be amended only if a proposal to that effect is approved by not less than two-thirds of the votes cast in a referendum of the general public in Northern Ireland.

Commentary on Article 20

- The CAJ's formula for amending the Bill of Rights is based on a combination of what is currently required in the United States of America and in the Republic of Ireland. We much prefer it to the system used for amending the European Convention on Human Rights and Fundamental Freedoms, which requires either a unanimous vote by the member states of the Council of Europe or the adoption of Protocols, while the Canadian Charter of Rights and Freedoms simply uses the very undesirable device of an "override" clause (Article 33), which allows a legislature to declare that a piece of legislation is to operate for at least five years notwithstanding the main provisions of the Charter.
- The CAJ wishes the Bill of Rights for Northern Ireland to have a degree of permanence. It should be a document with an "higher" status than an ordinary Act of Parliament. There remains considerable room for argument as to how precisely that status can be achieved.

List of CAJ Publications

No. 1 **The Administration of Justice in Northern Ireland:** the proceedings of a conference held in Belfast on June 13th, 1981 (no longer in print).

No. 2 **Emergency laws in Northern Ireland:** a conference report, 1982 (no longer in print).

No. 3 **Complaints Against the Police in Northern Ireland,** 1982.

No. 4 **Procedures for handling complaints against the Police,** 1983 (updated by pamphlet No. 16).

No. 5 **Emergency Laws: suggestions for reform in Northern Ireland,** 1983 (photocopy available).

No. 6 **Consultation between the police and the public,** 1985.

No. 7 **Ways of protecting minority rights in Northern Ireland,** 1985 (price £1.00)

No. 8 **Plastic Bullets and the Law,** 1985 (updated by pamphlet No. 15).

No. 9 **The Blessings of Liberty: An American Perspective on a Bill of Rights for Northern Ireland,** 1986 (price £1.50).

No. 10 **The Stalker Affair: More questions than answers,** 1988 (price £1.50).

No. 11 **Police Accountability in Northern Ireland,** 1988 (price £2.00).

No. 12 **Life Sentence and SOSP Prisoners in Northern Ireland,** 1989 (price £1.50).

No. 13 **Debt - An Emergency Situation? A history of the Payments for Debt Act in Northern Ireland and its effects on public employees and people on state benefits.** 1989 (price £2.00)

No. 14 **Lay Visitors to Police Stations in Northern Ireland,** 1990 (price £2.00)

No. 15 **Plastic Bullets and the Law,** 1990 (price £2.00).

No. 16 **Cause for Complaint.** The system for dealing with complaints against the police in Northern Ireland 1990 (price £2.00).

No. 17 **Making Rights Count.** Includes a proposed Bill of Rights for Northern Ireland, 1990 (price £3.00).

No. 18 **Inquests and Disputed Killings in Northern Ireland,** 1992 (price £3.50/IR£4.00).

No. 19 **The Casement Trials: A Case Study on the Right to a Fair Trial in Northern Ireland,** 1992 (price £3.00/IR£3.50).

No. 20 **Racism in Northern Ireland: The need for legislation to combat racial discrimination in Northern Ireland,** June 1992. The proceedings of a CAJ conference held on 30th November 1991 (price £3.00/IR £3.50).

Civil Liberties in Northern Ireland: The CAJ Handbook, 1990 (price £4.95).

A briefing Paper on the Northern Ireland (Emergency Provisions) Bill, 1991 (Photocopy available, price £3.00).

Human Rights in Northern Ireland: A submission to the United Nations Human Rights Committee, 1991 (price £1.50).

Submission to the United Nations Committee Against Torture, November 1991 (price £1.50).

Submission to the Royal Commission on Criminal Justice, November 1991 (price £1.50).

Submission to United Nations Sub Commission on the Prevention of Discrimination and the Protection of Minorities, August 1992 (£1.00).

Submission to Initiative '92, January 1993 (price £1.50)

Submission to the Central Community Relations Unit on Race Relations in Northern Ireland, March 1993 (price £3.00)