Human Rights in Northern Ireland

A submission by

the Committee on the Administration of Justice,
Belfast, Northern Ireland

to

the United Nations' Human Rights Committee

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Introduction

The **Committee on the Administration of Justice** (the **CAJ**) is an independent, non-political organisation which since 1981 has been monitoring the operation of the legal system in Northern Ireland and making recommendations for reform. It strives to ensure that, despite the "emergency" in Northern Ireland, international human rights standards are adhered to at all times. The membership of the organisation consists of practising lawyers, academics, community workers, journalists and other interested persons.

The CAJ has read with interest the Third Periodic Report submitted by the government of the United Kingdom of Great Britain and Northern Ireland to the Human Rights Committee of the United Nations under Article 40 of the International Covenant on Civil and Political Rights. It has examined in particular the Report's statements concerning the situation in Northern Ireland. In this document the CAJ is making public its comments on those statements, on a paragraph by paragraph basis. They should be read in conjunction with the Report itself. We hope that the comments will be of use to the members of the Human Rights Committee whenever they are considering the Report later in 1991.

The submission is being delivered to the Human Rights Committee accompanied by a set of enclosures. These take the form of previous CAJ publications, further copies of which are available from CAJ's office in Belfast (for address, see cover of this report).

PART I

General: paras 1 - 14

It is inaccurate to say, as the government's Report does in para.2, that "the country has not....felt the need for a written constitution or a comprehensive Bill of Rights". Outside of present government circles, there is widespread support throughout the country for new constitutional arrangements which will guarantee basic civil liberties. This is because the claim that "the rights and freedoms recognised in other countries' constitutions are inherent in this country's legal system" (para.2) has been shown to be unfounded, particularly during the last 10 years, which have witnessed a steady erosion of rights and freedoms. This loss of liberty is succinctly documented in Decade of Decline: Civil Liberties in the Thatcher Years by Peter Thornton, (published by Liberty, 1989) and "Freedom under Thatcher":Civil Liberties in Thatcher's Britain, by K.D.Ewing and C.A. Gearty (published by Oxford University Press, 1990).

In Northern Ireland, all the political parties are on record as being in favour of a Bill of Rights. The CAJ has documented this support and has itself been waging a campaign since 1983 for the introduction of a Bill of Rights for Northern Ireland (see, most recently, CAJ Pamphlet No.17 (October 1990): Making Rights Count). We believe there is an urgent need for such a Bill because without it the rule of law will slip further away in Northern Ireland. Even in an "emergency", rights must be safeguarded.

In 1973 the UK Parliament passed the Northern Ireland Constitution Act, which outlaws discriminatory legislation and creates the Standing Advisory Commission on Human Rights. In each of its Annual Reports to date, this Commission has highlighted the respects in which Northern Ireland's law fails to satisfy international standards. It too has called for a Bill of Rights and in every report since 1983 it has reaffirmed its view that the European Convention on Human Rights should be incorporated into domestic law.

The UK's Report says that the government has abided and will abide by decisions of the European Commission of Human Rights and the European Court of Human Rights. In view of the fact that the UK has been condemned by these institutions on more occasions than any other member state of the Council of Europe, it would surely be easier for all concerned if residents of the UK could plead the European Convention in their own domestic courts. The UK remains one of only seven member states not to have incorporated the Convention into

its own law (para 6); but all of the other six states have written constitutions containing guarantees of civil liberties and all, unlike the UK, have ratified the Optional Protocol to the International Covenant. The gap in human rights protection in the UK is obvious.

Para.11 of the Report states that "similar principles apply throughout the United Kingdom". This statement is not only misleading, but inaccurate. In several respects the basic principles have been altered in Northern Ireland (see CAJ's **Briefing on the Northern Ireland (Emergency Provisions) Bill**). For example:

- jury trial for serious offences has been abandoned;
- all arrested and accused persons can be prejudiced because they choose to remain silent in the face of questioning;
- anyone can be stopped and questioned at any time by the police or army; and
- there is no law against racial discrimination.

PART II

Information relating to specific Articles

Article 2:

Minority rights: paras 21 - 50

Irish people in Britain

The largest ethnic group living in Great Britain are the Irish, who are not mentioned in the list in para. 21. There are constant allegations of discrimination against Irish people in the operation of the criminal justice system in Great Britain. The quashing of the convictions of the Guildford Four in 1989 is only the most publicized evidence of the blatant victimisation of innocent Irish suspects.

Training on race issues for officials such as police officers (see para. 29) should include instruction on how to avoid the adoption of stereotypical attitudes towards Irish people. These frequently become apparent when investigations are being made into "terrorist" incidents in Great Britain. Journalists and broadcasters could also benefit from such training. The fact that the Irish are not recognized by the UK as an ethnic minority in Great Britain means that such steps are highly unlikely.

Travellers in Northern Ireland

Travellers (sometimes inaccurately termed "gypsies") are an ethnic group. They are a people with a separate identity, culture and history, though they are of Irish origin. According to the Final Report of the Advisory Committee on Travellers (NI) for the period 1 August 1986 - 31 December 1989 there were 203 Traveller families normally resident in Northern Ireland. Conservative estimates for January 1991 have risen to 250 families.

Many official reports have documented the marginalisation and oppression experienced by Travellers. However it is the lack of action, and the absence of any statutory response developed out of a respect for the ethnic identity of the Travellers, that point to the root of the problems they experience. Indeed, racism at the institutional level is evident in our laws, in the ethos, practice and values of our institutions and of respected forces in our society.

- Despite international obligations to safeguard freedom both of movement and of residence, in January 1991 there are still approximately 186 travelling families living on illegal, unserviced roadside camps in Northern Ireland. Current legislation relating directly to site provision in Northern Ireland is the Caravans Act (NI) 1963 and the Local Government (Miscellaneous Provisions) (NI) Order 1985. The 1963 Act empowers but does not oblige local authorities to provide serviced sites (in contrast to the Caravans Act 1968 applying to England and Wales which does place a legal obligation on local authorities). The effect of the 1985 Order is to restrict Travellers' freedom of movement and their right of security of residence, effectively introducing a quota system of Travellers in local areas. It also specifically discriminates against one group of people and makes it a criminal offence to camp on unauthorised land in a designated area. In practice this can mean that there is an absolute limit on the number of Travellers living in a specified area, and can even prevent visiting by relatives. This designation legislation should be repealed and legislation should be introduced to penalise local councils who refuse to provide properly serviced sites.

- The power to evict Travellers from unofficial Travellers' sites has also been much abused in Northern Ireland. The legislation used for this is the Public Health (Ireland) Act 1878 and Article 48 of the Roads (NI) Order 1980. All such evictions should cease unless and until there is alternative suitable accommodation.

- Educational provision is another area where the needs of the settled community over-ride the urgent needs of Travellers. And similarly the social security system contains within it no flexibility to take account of Travellers' needs and customs.

- In a case taken by the Commission for Racial Equality in London in 1987 under the Race Relations Act (1976), which only applies to England and Wales, it was confirmed on appeal that gypsies and travellers are a distinct ethnic group. As yet, this legislation has not been extended to Northern Ireland which means that not only does the travelling community here have no legal protection against discrimination based on race but also they are not recognised as a separate ethnic group with corresponding rights. Until this fact is established and accepted in law, the situation can only be seen as a subversion of Travellers' culture and detrimental to any work which supports their right to retain and develop their identity.

Immigrant ethnic groups in Northern Ireland

The size of the ethnic communities here is not, as the government implies, negligible and there are allegations that Chinese, Indian, Vietnamese and Malaysian people are discriminated against from time to time. The Chinese Community is the largest of these groupings estimated at approximately 5000. This community reports almost constant verbal abuse of Chinese children and members claim that they have been discriminated against in the allocation of housing and in the treatment they receive from social services, the police and educational authorities. Individuals have been refused admittance to public places and the staff of restaurants and take-aways are subject to a high degree of harassment and abuse by customers. The situation is exacerbated by the absence of any protection against racial discrimination. The victims know they have no possible redress. Until legislation is in place, the climate will continue to permit and tolerate racist behaviour in Northern Ireland. Institutional and cultural racism will persist in Northern Irish society unless it is specifically made clear that such behaviour is unacceptable. It is entirely unacceptable to argue that because the numbers of people are small there is some justification for leaving this group of people without the protection of the law. Each member of Northern Irish society deserves equality of opportunity and equity of treatment. Race relations legislation for Northern Ireland would place a duty on those in authority to ensure that this is ensured.

- It is indefensible that the Race Relations Acts do not apply in Northern Ireland (para. 35).

- As regards paras 35 and 36 of the Report, it appears that as yet there are no equivalents in Northern Ireland to the relevant provisions of the Housing and Planning Act 1986, the Housing Act 1988 and the Education Reform Act 1988.

- Despite government claims, research is required on whether there is substance to the numerous allegations which are made concerning direct and indirect discrimination in the prosecuting and sentencing systems (para. 28).

Irish speakers in Northern Ireland

Irish speakers in Northern Ireland cannot practise their culture on an equal footing with English speakers. A number of points can be made:

- there is legislation outlawing street names in Irish;
- there is inadequate provision of Irish language programmes in the public broadcasting media;
- Irish speakers claim that the education system discriminates against their language by simply putting it on an equal footing with other European languages such as French and Spanish in the general curriculum. As Irish is the country's indigenous language, it should receive a special place in the curriculum;
- despite an extraordinary upsurge of interest in Irish medium education, it took thirteen years before the first Irish school in Belfast was given state funding on a par with other schools;

- mention must finally be made of the political vetting of Glor na nGael, a community based organisation promoting Irish in Belfast. The government withdrew funding from them claiming that the organisation "improve(d) the standing and furthered the aims of paramilitary organisations". To date no information has been produced justifying such a claim. Similarly, no appeal mechanism is available whereby a vetted group can contest the government's allegations. Along with the setting up of a government appointed Irish language commission, the suspicion remains that the government continues to want to control the Irish language movement rather than support local people who are working for language rights. (For further information on the vetting of Glor na nGael and the issue of political vetting in general, see report **The Political Vetting of Community Groups in Northern Ireland,** produced in 1990 by four agencies including CAJ.)

Fair employment: paras 46 - 49

As regards the **Fair Employment Acts**, it should be noted that the teaching profession is exempt from their requirements, as are small companies. This perpetuates sectarian divisions in education and the commercial sector in Northern Ireland. Furthermore, the Secretary of State can override the protections of the Fair Employment Acts by issuing a certificate under section 42 of the 1976 Act saying that discrimination is justified in a particular case on grounds of national security. There are many allegations that this process has been abused. The Fair Employment Commission itself objects to it, but the government is unwilling to liberalise the law.

It also appears that Northern Ireland's regulations on the appointment of civil servants contravene EEC requirements. The regulations have been used to prevent Irish citizens from being appointed even to labouring jobs in the forestry service, a clear breach of Article 48 of the Treaty of Rome governing the free movement of workers.

Article 4

Derogations: paras 57 - 60

The UK has issued a notice of derogation so that it can detain persons who are "reasonably suspected of involvement in terrorist activity" for up to 7 days, without bringing them before a magistrate (and even though "terrorism" itself is not a crime). In the CAJ's view it is highly doubtful whether derogation can be justified on the basis of a "public emergency threatening the life of the nation". This is particularly so as regards the alleged threat in Great Britain constituted by "terrorists" not acting in relation to Northern Irish affairs.

But even if the UK government seeks to justify derogation, it is highly doubtful whether the measures taken under the Prevention of Terrorism Act on detention are "strictly required by the exigencies of the situation", as Article 4 (1) on the International Covenant demands. The CAJ believes that the new detention provisions introduced from 1st January 1990 by the **Police and Criminal Evidence (NI) Order 1989** could be substituted for those in the Prevention of Terrorism Act without any loss of security or concession to "terrorism". These provisions permit detention for up to 36 hours without appearance before a magistrate; this period can be extended up to a total of 96 hours if a magistrate is convinced of the need for this. This four day period appears to be the maximum envisaged by the European Convention on Human Rights (see **Fox, Campbell and Hartley** v. **UK**, September 1990, Eur. Ct.H.R.).

Article 6

The Right to Life: paras 61 - 75

Life expectancy: para. 63

The rates of infant mortality, of physical and mental handicap and of heart disease are all higher in Northern Ireland than in other parts of the United Kingdom. Recently there have been allegations of a high incidence of cancer in the area on the County Down coast close to the Sellafield nuclear plant in Cumbria, England.

The use of lethal force by members of the security forces in Northern Ireland: paras 69 - 74

The need for independent investigations: paras 66 and 72

Despite government claims, incidents in Northern Ireland where shots have been fired by the Royal Ulster Constabulary are not always investigated by a separate police force. Following the Stalker/Sampson inquiry into the so-called "shoot-to-kill" incidents in 1982, the Chief Constable of the RUC said that future such incidents would be investigated by an outside police force. To date, however, this promise has not been acted upon. A 15-year-old boy, Seamus Duffy, was killed by a plastic bullet fired by a police officer in August 1989; an investigation was carried out by the police themselves, but no prosecution ensued. Nor are such incidents involving the Army independently investigated. In the most recent killing by soldiers, that of Fergal Carraher in December 1990, the police are acting as spokesperson for the army as well as investigating the circumstances of the shooting.

Inadequacy of the law: paras 65, 69 and 70

The account in para.69 of the government's Report on the use of lethal force by members of the security forces is jejune in the extreme. The law on the use of force, as enshrined in section 3 of the **Criminal Law Act (NI) 1967**, is inadequate to deal with the kinds of so-called shoot-to-kill incidents which regularly occur. The test should be whether force was **absolutely necessary** to preserve other human life, not, as at present, whether it was **reasonable in all the circumstances.** The courts have interpreted the present test in a manner which gives much too much scope for the use of lethal force by soldiers and police officers (see **Attorney-General for Northern Ireland's Reference (No.1 of 1975)** [1977] AC 105 and **Farrell v. Secretary of State for Defence** [1980] 1 A11 ER 166).

- Consideration needs to be given to whether a wholly new offence should be created, such as "inappropriate or unlawful discharge of a firearm".
- The police's code for firing weapons should be tightened up (para. 69).

The procedures for investigating deaths caused by the security forces needs to be improved: paras 72 - 73

Soldiers in Northern Ireland use firearms not just when they believe there is imminent danger to life (para. 70). In January 1990, to take just one incident, three men were killed outside a betting shop in West Belfast while in the process of raiding it. One of them was sitting in a car, unarmed and unmasked. According to the autopsy report, he was shot at a range of less than 2 feet. In December 1990 the Director of Public Prosecutions announced that there would be no prosecution of the anonymous under-cover soldiers involved in this incident. Quite apart from the deplorable nature of the decision, where it appeared that civil servants and the police make the decisions in private rather than allowing the courts to decide in public, there is the added fact of the length of time involved in processing these incidents. Why, for example did it take 6 months before the autopsy report was completed? Why did it take 5 months for the Director of Public Prosecutions to come to a conclusion simply on the question of whether there is a case to be answered, after receiving all the relevant materials?

Very few police officers or soldiers have been charged in connection with the 339 deaths which have occurred at the hands of the security forces since the onset of the present troubles in 1969. (Of these 339 deaths, 184 involved civilians, with no connection to any para-military group). A tiny number of those who have been prosecuted have been convicted. It seems that it is very rare indeed for a court-martial to take place in the circumstances described here. There is a strong feeling amongst ordinary people in Northern Ireland that the security forces receive institutional protection from the rule of law when involved in incidents where civilians are killed.

Disparity in sentencing: para 73

Some of the soldiers convicted in Northern Ireland have served very light sentences, thereby encouraging the commonly held view that in official eyes their offences were not serious. The one British soldier to have been convicted of murder, Private Thain, was released from prison after serving less than three years of a life sentence.

Plastic bullets: para 74

Plastic bullets are used in Northern Ireland in situations where life and property are not seriously at risk. In 11 out of the 14 deaths caused by plastic bullets, army and police claims that the victim was rioting have been contested either by eye-witnesses or by the judge or coroner conducting an inquiry into the incidents.

Nonetheless, the decision taken in March 1990 not to prosecute any police officer in connection with the death of Seamus Duffy did not surprise civil rights activists because, although 17 people have been killed by plastic or rubber bullets, only one member of the security forces has ever been charged in connection therewith, and that police officer was acquitted. The CAJ views with alarm the government's recent decision to make plastic bullets available to the Ulster Defence Regiment (the regiment of the British army which is locally recruited and is overwhelmingly Protestant). The organisation has published a pamphlet providing information and detailing its concerns on this issue (see CAJ Pamphlet No. 15, Plastic Bullets and the Law, 1990).

Coroners' inquests

Because of the extraordinary unwillingness of the authorities to bring members of the security forces to court to answer for their actions, inquests have become almost the only legal mechanism whereby victims' families have an opportunity to get information as to the cause of death. However, the rules concerning coroners' inquests in Northern Ireland tend to work against the emergence of the truth.

The differences between the rules governing coroners' inquests in Northern Ireland and those applying in England have been highlighted by Amnesty International (see their report on Northern Ireland, July 1988). A number of points are worthy of note:

- There is no verdict in coroners' inquests in Northern Ireland, only "findings". This means that the jury must give only the most generalised account of what happened, but make no observations as to culpability. This situation has been in force since 1981. By contrast, while no indication of civil or criminal liability of a named person may be given, in England and Wales verdicts of "unlawful killing" are permitted. The impression given is that the law works to protect members of the security forces from facing prosecution.

- A second factor is the withholding of forensic and other evidence from victims' families and legal representatives. There is no statutory obligation to make forensic, post mortem or witness statement evidence available to families. Because of this, the evidence is overwhelmingly withheld until the inquest actually opens. A welcome departure from this norm came in the case earlier referred to of the three men killed by soldiers in January 1990. On that occasion, the pathologist's reports were given to the families some 6 months after the incident occurred. The impression given by this withholding of information is that government is concerned to keep the lid on information relating to the use of lethal force by members of the security forces.

- Another factor which prevents a clear picture from emerging is that the soldiers or police officers who kill will not appear at the inquest to give an account of their actions. The only witnesses who appear at an inquest are those called by the coroner; the families cannot call witnesses. A succession of legal battles has resulted in the fact that members of the security forces cannot, in fact be called to give evidence, even by the coroner: see the decision of the House of Lords in McKerr v Armagh Coroner [1990] 1 All ER

865, where rules forbidding the calling as witnesses of persons charged with an offence relating to the death were upheld as **intra vires**. The House of Lords is currently considering a further challenge to the use in evidence of written statements made by persons not called as witnesses.

- A final point is that legal aid is not available for families to assist them with legal representation at inquests. This puts families at an immense disadvantage. They are therefore reliant on the goodwill of solicitors and barristers, which, thankfully has not been lacking. There is often great expense involved in trying to get independent expert advice or opinion. The result is that official evidence is, by and large, hard to contest. The spectacle of, in one case, a family's barrister and solicitor confronting legal representatives of the Northern Ireland Office, the Ministry of Defence, the Royal Ulster Constabulary as well as police forensic experts, state pathologists and other security force personnel (though not the ones who actually fired the shots in question) makes a mockery of the supposed independence and fact-finding remit of the coroners' inquest system.

Article 7

The right not to be subjected to cruel, inhuman or degrading treatment: paras 76 - 107

Prisons: paras 76 - 80

The review of prison rules mentioned in para.80 of the Report does not yet seem to have borne fruit in Northern Ireland. There is currently a need to change complaint procedures, to improve conditions for remand prisoners (see too para. 149), to make psychiatric help widely available, to treat low-risk prisoners separately from high-risk prisoners, to apply the remission and licence systems more fairly (so as not to discriminate against people who would be leaving prison to return to troubled areas), to judicialise the system for reviewing life sentences (see CAJ Pamphlet No.12, **Life Sentence and SOSP Prisoners in Northern Ireland**, 1989), to protect Republican and Loyalist prisoners who are forcibly integrated, to transfer to Northern Ireland prisoners from there who are serving sentences in Great Britain, (see **The Transfer of Prisoners Report**, a pamphlet published by four agencies including CAJ, 1990), and to give help and better facilities to members of a prisoner's family who are visiting him or her in prison.

Police disciplinary procedures: paras 96 - 97

Despite the greater powers on paper of the Independent Commission for Police Complaints, matters are not in fact referred to it by the Chief Constable, the Police Authority or the

Secretary of State (para 97). The Stevens Inquiry into allegations of leaks of security information by members of the security forces to loyalist paramilitaries was not supervised by the Commission, despite its being prompted to request involvement.

The system does not allow for investigation of general complaints about police practices and policies and an extremely small number of the more specific complaints by individuals are substantiated. The figure released by the Chief Constable for 1989 was 58 cases substantiated out of 1,384 cases fully investigated (4.1%). The Commission's figures were 1,365 complaints fully investigated, leading to eight criminal charges, 14 formal disciplinary charges and 54 cases where informal disciplinary action was taken (e.g. advice or a warning); on these figures the "success" rate for complainants was about 8.6%. The system for handling complaints against the RUC was reformed in 1987; the CAJ published the first comprehensive critique of the new system in its Pamphlet No. 16, **Cause for Complaint**, 1990.

In Northern Ireland, where a large proportion of the population does not have complete confidence in the police's impartiality, it is particularly necessary for investigations of complaints to be conducted by non-police officers. In our view, at the very least, the jurisdiction of the Northern Ireland Ombudsman should be extended so as to cover allegations of maladministration by the police. We think that the government's arguments for not introducing independent investigators are specious.

There are still numerous allegations of assaults committed by police officers during an interview with a person held in custody (see para.99). In 1989 76 such cases were fully investigated, but for the second year running not a single one of them was substantiated. Nevertheless, our office has received reports suggesting a recent upsurge in allegations of inhuman and degrading treatment when in police detention. (See next section of this submission on "involuntary confessions".)

Exercise of emergency powers: para 106

While welcoming the publication of the Police and Criminal Evidence Codes (referred to in para. 106) it is important to note that these do not cover those detained under emergency powers, who form an important proportion of detainees in Northern Ireland. The long-promised guidance on the exercise of emergency powers was eventually published in July 1990. However it differs from the PACE Codes in the following important respects:

- 1. A person detained under the Emergency Provisions Act or the Prevention of Terrorism Act should be informed of the grounds for the detention before being questioned about any offence. The PACE Code states that the detainee must be so informed. Only the latter complies with Article 5 (2) of the European Convention on Human Rights.
- 2. Ordinary detainees must be told if someone is inquiring about them, be supplied on request with writing materials, have a message sent as soon as practicable and be allowed to speak on the telephone for a reasonable time to one person. None of these rights belong to "emergency" detainees.
- 3. The PACE Code states that a detainee should be able to consult a specific solicitor and that the custody officer has a discretion to allow several attempts to contact one. Again, "emergency" detainees are denied these rights

- 4. Before an ordinary detainee is interviewed, each interviewing officer must identify him/herself (and other officers present) by name and rank. Not so in "emergency" cases.
- 5. Ordinary detainees may be examined by a doctor of their own choice (albeit at his or her own expense). Not so an "emergency" detainee.
- 6. Ordinary detainees must be visited in their cells by a police officer every hour, and are allowed to have meals supplied from outside the place of detention. Not so "emergency" detainees.
- 7. For up to a year after an ordinary detainee has left detention, s/he (or a legal representative) can demand a copy of the custody record in his/her case. There is also a right to inspect the original record, provided reasonable notice is given. "Emergency" detainees are denied those rights.

These discrepancies are all the more unjustifiable when one knows that persons arrested under the Prevention of Terrorism Act in Great Britain do enjoy the benefits of the PACE Codes there. This is discrimination against people living in Northern Ireland.

Article 9

The Right to Liberty: paras 108 - 127

Emergency powers of the police and army: paras 114 - 115

The recommendations of the independent reviewer referred to in para.114 (Viscount Colville of Culross QC) have often been ignored by the government, e.g. his suggestions that interrogations at police stations be video-recorded and that the power to intern without trial be dropped. Moreover those reviews have always been carried out on limited terms of reference which presuppose the continuing need for emergency powers of some description in Northern Ireland, a presupposition which the CAJ would contest. In this submission we will concentrate on confessional evidence (para. 114(d)) and then highlight a number of other factors. (For a more detailed examination of CAJ's position on emergency law, see CAJ's Briefing on the Northern Ireland (Emergency Provisions) Bill.)

Involuntary confessions: para. 114(d)

The importance of confessions to the emergency system of criminal justice in Northern Ireland is clear. In a 1981 study of the operation of emergency legislation, Dermot Walsh found that confessions were involved in 89% of all scheduled offence cases. In 93% of cases where the accused pleaded guilty he had made a confession. Though this survey is now 10 years old, there appears little reason to believe there has been a significant change in the

situation. It is crucial to ensure that there are adequate safeguards against any improper police conduct during interrogations and that the legal standard for admissibility of confessions is sufficiently high to prevent people being convicted on the basis of confessions that are unreliable or have been obtained by undue pressure.

In fact the standard used since 1973 is a significant departure from the common law norm which renders a prisoner's confession admissible if it "has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression". It was concluded that a less stringent test would be appropriate in emergency conditions.

As currently formulated, the present test allows any written or oral statement by the accused to be admitted as evidence, provided that the defence does not bring forward prima facie evidence that the accused was subjected to "torture or to inhuman or degrading treatment, or to any violence or threat of violence (whether or not amounting to torture) in order to induce him to make the statement".

A number of factors need to be borne in mind:

- 1. Claims of miscarriage of justice are by no means unknown in Northern Ireland. The case of 4 Ulster Defence Regiment soldiers convicted in 1986 for the murder of Adrian Carroll is currently receiving wide publicity. In our office we have received information on a number of other cases where miscarriages of justice are alleged to have taken place. It may be that the success of the campaign for the "UDR 4", added to the release of the Guildford 4, has encouraged others to raise their voices. The availability of new forensic techniques such as electro-static deposition analysis (ESDA), which can detect interference of interview notes by police officers, has also encouraged people that the police's word can be challenged.
- 2. There is evidence of a recent upsurge in ill-treatment of detainees in police interrogation centres. Apart from the fact that a number of persons have won damages, or had charges against them thrown out of court, because of proven ill-treatment, there has also been an increase in the number of allegations of ill-treatment or harassment in the last year. These have been documented by lawyers and by a group called the Community for Justice.
- 3. Finally, even if the claims of miscarriage and ill-treatment were not present, it would still be important that the criminal justice process be seen to act justly and only convict on evidence that has been fairly acquired and the reliability of which is unquestioned and that police officers have no incentive to engage in harsh, oppressive or underhand behaviour in interrogating those who, at the time of the interrogation, the law regards as innocent people.

Judged by these criteria, there is still significant cause for concern with the emergency standard. Can the public really be confident that justice is seen to be done where someone is convicted purely on the basis of a confession after up to 7 days questioning in police custody? The New York Bar Association commented thus on the emergency standard:

> *"Its existence stems from Lord Diplock's belief that the existing standard for admissibility was an impediment to convicting those charged with terrorist offences. Acceptance, however, of such a premise does far more than accommodate to the exigencies of an emergency situation; it legitimises a standard of proof that is fundamentally*

inconsistent with basic tenets of fairness and increases the likelihood of the admissibility of unreliable confessions." (Criminal Justice and Human Rights in Northern Ireland, 1988)

Other aspects of emergency law

- **The arrest power in section 13 of the Emergency Provisions Act 1978** (clause 17 of the Northern Ireland (Emergency Provisions) Bill 1991) **should have been allowed to lapse** after the coming into force of the Police and Criminal Evidence (NI) Order 1989 (on 1st January 1990). But this has not happened. The power was used to arrest one person in 1988.
- Para 114(e) refers to the fact that in Northern Ireland **the army does not have to give any reason for the arrests it carries out** (see EPA 1978 s.14(2), which is clause 18 (2) of the 1991 Bill). In 1989 it arrested 85 persons, all of whom were handed over to the police; only 39 were later charged with terrorist-type offences.
- **The wording of section 18 of the EPA 1978** (clause 23 of the 1991 Bill), **which requires people who are stopped by the security forces to answer certain questions, is too vague**; no-one knows, for example, whether it is unlawful to refuse to give one's address or one's date of birth.
- The arrest power in section 14 of the Prevention of Terrorism Act 1989 may be unnecessary because the ordinary arrest powers conferred by the PACE (NI) Order 1989 go far enough in allowing the police to carry out preventative arrests. It is, in any event, improper to allow arrests for "involvement in terrorism" even though terrorism itself is not a specific offence. In 1989 there were 1,583 persons detained under the PTA in Northern Ireland but only 308 of these were charged with any kind of criminal offence; the fact that a total of 456 persons were proceeded against for scheduled offences (i.e. those supposedly most frequently committed by terrorists) shows that arrest under the PTA is by no means a necessary prerequisite to such proceedings.
- The new reviews under the Prevention of Terrorism Act mentioned in para.112 of the UK's Report **do not satisfy the requirements of Article 5(3) of the European Convention** on Human Rights (because they are conducted by a police officer), so the government has still had to derogate from the Convention in the light of the Brogan judgment (see para 59).
- In connection with Northern Irish affairs it is common to see people being charged with conspiracy, sometimes with persons unknown to kill persons unknown on dates unknown; this lack of specificity is not tolerated in other parts of the criminal law or in other countries. It possibly amounts to a violation of Article 14 (3) (1) of the International Covenant, which says that "In the determination of any criminal charge against him, everyone shall be entitled... to be informed... in detail... of the nature and cause of the charge against him".
- On occasions the Crown make use of so-called "supergrasses" (accomplices who supply information implicating many other people in crimes). To rely on such evidence is surely unsafe unless it is corroborated.
- The government's own figures show that a very high percentage of detainees who ask for access to a solicitor are denied such access. In 1989 there were 1,152 requests for such access but only 380 were allowed immediately.

- There is **not yet any tape- or video-recording of police interrogation sessions in Northern Ireland.** We understand that experiments with tape-recording are being conducted for "ordinary" cases, but not for persons arrested under the emergency laws.
- **"Scheduled" offences** (see para. 114 (a) of the Report) **include some where there is no "terrorist" involvement**: the "de-scheduling" system is deficient, because, to take one example, all persons charged with armed robbery, whether they have a paramilitary connection or not, must be tried in a juryless Diplock court. In 1989 there were 1,198 applications for de-scheduling - 622 were granted and 576 were refused.
- The **rule regarding confessions** (see para.114(d)) **still permits the issuing of inducements in order to persuade a detainee to confess.** An offer of money or of easier treatment, is not enough to make a confession inadmissible.
- The **power to intern without trial still exists** in that the Secretary of State can order its introduction without seeking the prior approval of Parliament.
- **Further extensive powers** are likely to become law later this year arising from the Northern Ireland (Emergency Provisions) Bill currently going through the Westminster Parliament.
- With reference to paras.108(e) and 113 of the UK's Report, it should be noted that, in **Northern Ireland, a person's mouth is treated as a non-intimate body orifice whereas in England and Wales it is regarded as intimate**. This means that samples can be taken from a person's mouth in Northern Ireland without his or her consent (by force if necessary).
- A **suspect's right to silence has also been seriously diminished** here: he or she can find that silence will be taken by a judge as corroborative evidence of guilt. Both of these last two variations from English law exist in relation to **all** offences in Northern Ireland.

Conclusion

In all these matters the "ordinary" criminal justice system has been "infected" by measures designed (ineffectually) for the "emergency" justice system. We believe that the emergency powers are today more a part of the problem in Northern Ireland than they are a part of the solution.

Article 10

Treatment of Detainees: paras 128 - 171

The changes made to prison sentencing by section 22 of the PTA 1989 (see para. 170 of the Report) will tend to lengthen sentences, while section 23 (conviction of scheduled offence during period of remission) may breach Article 5 (3) of the European

Convention on Human Rights because it does not allow a judge any discretion to impose or not impose the remitted sentence.

The Standing Orders referred to in para.169 do not yet seem to be readily available in Northern Ireland.

Article 13

Protection of aliens

Exclusion orders: paras 202 - 204

It must be remembered that there can be no judicial review of the purely executive act of issuing an exclusion order under the Prevention of Terrorism Act (paras 202 - 204). There is also no reason given for the exclusion being imposed. Furthermore, some subjects of exclusion orders are not notified when an order has ceased to apply to them. The full range of defects in the present law on this matter is clearly explained in chapter 7 of Civil Liberties in Northern Ireland: The CAJ Handbook, October 1990.

Article 14

The Right to a Fair Hearing: paras 205 - 225

In Northern Ireland there are not yet any time limits in ordinary criminal cases (see para.211). The delays in scheduled cases are far too long. In 1989 the average waiting time between first remand and trial was approximately 41 weeks.

No good justification for the change in the law on the right to silence in Northern Ireland was ever supplied (see para.214). The crime rate in the area is not rising dramatically, and the RUC's detection rate is amongst the highest in the UK. There was no consultation with any of the usual bodies prior to the introduction of the change.

With reference to para.221, for speakers of Irish, there is nothing comparable in Northern Ireland to the provisions of the Welsh Language Act 1967.

Article 17

Privacy: paras 230 - 243

Despite the Interception of Communications Act 1985, referred to in para.231, a person can still not obtain a categorical statement to the effect that his or her mail or telephone calls are being intercepted. Similarly, "national security" is a typical reason given by the government for not publishing or making available to interested parties information that would probably embarrass it (see para.234). Typical examples are information in relation to the use of lethal force by members of the security forces and the political vetting of Glor na nGael, the Irish language group referred to earlier. The use of Public Interest Immunity Certificates is commonly perceived as a mechanism whereby the authorities cover up mistakes or bad decisions by claiming to be acting in the national interest. "National security" is given a very wide meaning by the government in relation to affairs in Northern Ireland, so the security services can still do a great deal despite the 1989 Act mentioned in para.235.

Article 19

Freedom of Expression: paras 252 - 270

The Local Government (Access to Information) Act 1985 and the Access to Personal Files Act 1987 do not apply in Northern Ireland. Nor, however, does the Obscene Publications Act 1959.

With regard to para.261, the CAJ believes that the crime of sedition should be abolished: it could be applied in Northern Ireland, but to date, mercifully, has not been.

The broadcasting ban dealt with in para.265 is easily evaded and can operate in such a way as to add lustre to the arguments it is attempting to stifle. The CAJ regards it as an unjustifiable infringement of the right to freedom of expression.

Article 21

The Right to Assemble: paras 274 - 278

In Northern Ireland, meetings can be prohibited altogether and the Secretary of State's decision to prohibit a meeting or march cannot be judicially reviewed (see Article 5 of the Public Order (NI) Order 1987).

Proscription of organisations (para.277) serves no useful purpose in law: it can be easily evaded, thereby bringing the authority of the law into disrepute.

Article 25

The Right to Participate in Public Affairs

It is worthy of note that not one of Northern Ireland's full-time judges is female (para 360).