

**Committee on the Administration of Justice**  
(affiliate of the International Federation of Human Rights)

***Civil Liberties in Northern Ireland:***  
**A submission to the Clinton Administration**

The Committee on the Administration of Justice (CAJ) believes that abuses of civil liberties in Northern Ireland are wrong in themselves and that they contribute to the ongoing conflict.

CAJ is convinced that international scrutiny is one of the most effective ways to ensure that the United Kingdom government takes steps to end human rights violations in Northern Ireland. We have worked closely with Amnesty International, Helsinki Watch and the Lawyers Committee to highlight the human rights situation in Northern Ireland. We have also used a number of United Nations mechanisms to raise our concerns.

CAJ has been greatly encouraged by the interest shown by President Clinton in the human rights aspects of the Northern Irish conflict and feels that he can make a significant contribution.

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The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

In the second section, the author outlines the various methods used to collect and analyze the data. This includes both primary and secondary data collection techniques. The primary data was gathered through direct observation and interviews, while secondary data was obtained from existing reports and databases.

The third section provides a detailed description of the data analysis process. This involves identifying trends, patterns, and anomalies within the dataset. Statistical tools and software were used to facilitate this process, ensuring that the results are both accurate and reliable.

Finally, the document concludes with a summary of the findings and their implications. It highlights the key insights gained from the study and offers recommendations for future research and practice. The author notes that while the current study provides valuable information, there are still several areas that require further investigation.

## Summary of Main Points

The attached document outlines a number of areas which we believe merit attention. This is not an exhaustive list of our concerns and we are happy to provide information on any other civil liberties issue in Northern Ireland. We are also able to supply further material and references to support and substantiate the various points which we raise in this document. In particular we would like to see the Clinton administration pressing the UK government for:-

1. Alterations to the criminal law on the use of force in Northern Ireland to ensure that it complies with the European Convention on Human Rights and that those members of the security forces responsible for unlawful killings are held accountable for their actions.
2. Changes to the inquest procedure for the investigation of killings by members of the security forces to comply with United Nations Principles On the Effective Prevention And Investigation Of Extra-Legal, Arbitrary and Summary Execution.
3. A ban on the use of plastic bullets which appear to contravene the United Nations Basic Principles on the Use of Force by Law Enforcement Officials.
4. The appointment of an outside police officer to investigate killings by police in Northern Ireland and the institution of an independent public inquiry into allegations of a shoot-to-kill policy and the use of lethal force by members of the security forces in Northern Ireland.
5. The abolition of the Prevention of Terrorism Act power to detain suspects for up to seven days without charging them or bringing them before a court. This power has been found to contravene the European Convention on Human Rights and the government has derogated from the Convention as a result of the court's judgement.
6. Detainees held under emergency legislation should be given the right to private consultations with their lawyers as required under the United Nations Basic Principles on the Role of the Lawyer.
7. Detainees held under emergency legislation should be allowed to have their lawyers present during interrogation, something which never happens in Northern Ireland. Detainees held under the same legislation in Britain have this right.
8. Interrogations should be audio and video recorded to provide safeguards against ill-treatment.
9. The right to remain silent should be restored in full. The current situation contravenes article 14(3)(g) of the International Covenant on Civil and Political Rights and is in stark contrast to the fifth amendment of the U.S. Constitution.
10. A completely independent system for investigating complaints against the police should be created. The police should not investigate the police.
11. There should be a radical review of the emergency criminal justice system in Northern Ireland which permits juryless courts, has altered the rules of evidence, and gives draconian powers of stop, search, seizure and arrest. This review should measure these powers against international human rights standards.

12. There should be an independent assessment of the effectiveness of the Fair Employment legislation.

13. There is a need for stronger affirmative action and contract compliance procedures.

14. There should be a public inquiry into allegations of collusion between elements within the security forces and loyalist paramilitaries. Appropriate disciplinary action should be taken against those responsible.

## Introduction

The Committee on the Administration of Justice (CAJ), founded in 1981, is an independent organisation which monitors civil liberties issues, provides information to the public and campaigns locally, nationally and internationally for change in the administration of justice in Northern Ireland.

Its membership is drawn from all sections of the community and includes lawyers, students, community workers, trade unionists, unemployed people and academics.

CAJ is affiliated to the International Federation of Human Rights which has consultative status at the United Nations.

The Committee takes no position on the constitutional status of Northern Ireland and is opposed to the use of violence to achieve political ends. 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.

We wish to bring to your attention a number of issues which we feel represent serious abuses of human rights in Northern Ireland and serve to perpetuate the conflict. In each case we make recommendations which we feel will help to eradicate the abuse and establish greater **political accountability and judicial scrutiny**. This is not an exhaustive list of our concerns and we are happy to provide information on any other civil liberties issue in Northern Ireland. We are also able to supply further material and references to support and substantiate the various points which we raise in this document.

## The use of lethal force by members of the security forces

Police and soldiers have been responsible for killing 358 people since 1969. More than half the victims, were civilians uninvolved in paramilitary activity. Many more victims were unarmed.

One of the most serious concerns arising out of these killings is the consistent **lack of accountability** on the part of the authorities for their actions. Out of only 33 prosecutions brought, two have resulted in convictions; one for manslaughter, the other for murder. In the latter case, Private Thain was released from a life sentence after having served only two years and three months. He was then allowed back into his army regiment.

There is widespread concern that members of the security forces have killed with virtual impunity. The UK appears to be in breach of the U.N. Basic Principles on the Use of Force by Law Enforcement Officials. Principle 7 states: "Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law."

Another concern has been the use of **plastic bullets** by security forces. 14 people (including 7 children) have been killed by these. Only one member of the security forces has ever been charged in connection with these incidents and he was acquitted. This is despite the fact that in 11 out of 14 deaths, army and police claims that the victim was rioting have been contested either by witnesses or by the judge or coroner conducting an inquiry into these incidents. The use of plastic bullets

appears to contravene Principle 3 of the U.N. Basic Principles on the Use of Force by Law Enforcement Officials. These principles also call for prohibiting the use of those firearms and ammunition that cause unwarranted injury or present unwarranted risk.

Another serious issue involves allegations that authorities operate a practice, if not actually a policy of shoot-to-kill. Between 1982 and 1985, 23 individuals were shot dead by the security forces in covert operations. John Stalker, Deputy Chief Constable of Greater Manchester who conducted an inquiry into six killings in County Armagh within a month of each other in 1982 concluded: "The killings had a common feature: each left a strong impression that a type of pre-planned police ambush had occurred, and that someone had led these men to their deaths. The circumstances of those killings pointed to a police inclination, if not a policy, to shoot suspects dead without warning rather than to arrest them." A similar pattern involving the army is suggested by incidents in Loughgall (May '87), Drumnakilly (Aug. '88), Coagh (June '91) and Coalisland (April '92). Political assassinations are specifically prohibited under the U.N. Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Execution. It is worth noting that the U.N. Principles on Summary Execution state: "Exceptional circumstances including a state of war, internal political instability or any other public emergency may not be invoked as a justification of such executions."

Investigations into state killings in Northern Ireland likewise appear to contravene the U.N. principles. Lack of independence, unreasonable delays, the hindering of immediate access to suspects and evidence that less than thorough investigations are carried out all indicate that procedures contravene U.N. Principles which require governments to conduct thorough, prompt and impartial investigations into state killings. The authorities have failed to live up to a promise to have an outside police force investigate shooting incidents by the R.U.C.

Because of the inadequacies of these investigations and the lack of prosecutions, the holding of inquests into state killings has become the only means for relatives of the deceased to seek information and justice. But the rules governing inquests in Northern Ireland make them clearly inadequate for dealing with disputed killings: the narrow remit prevents them from establishing the full facts surrounding disputed killings; the person responsible for the killing does not have to give oral evidence, inquests no longer have the power to issue verdicts; and there is no legal aid provision for the families of the deceased. CAJ has concluded that inquests fail to meet U.N. criteria and has called for a radical review of the operation of the system.

A number of safeguards have been frequently proposed to eliminate the unnecessary use of force by police and soldiers and to make authorities accountable when disputed killings do occur. One proposal involves **changing the law governing the use of force**. Section 3 of the Criminal Law (Northern Ireland) Act 1967 provides that "such force as is reasonable in the circumstances" may be used. This phrase is excessively vague and has been made even more vague by the courts. Lord Diplock in the leading case on this issue justified the use of lethal force on the ground that it was reasonable for the soldier to assume that the person running away (who was unarmed and unconnected with any paramilitary organisation): "was likely sooner or later to participate in acts of violence." These rulings have offered the security forces an unjustifiably wide scope in using lethal force. By contrast the European Convention on Human Rights allows only such force as is "absolutely necessary." CAJ has concluded that the "reasonableness" standard should be tightened to one of "absolute necessity" to conform with international standards.

Other safeguards could include redefinition of the crime of manslaughter and the creation of a new offence. Under the present system, the only available charge is murder. Currently a manslaughter

charge can be brought only for inadvertent or accidental killing. In the context of a deliberate discharge resulting in death, only a charge of murder can be brought. One alternative that has been proposed is to provide for the possibility of a conviction for manslaughter where an accused person has acted honestly though in excess of what the circumstances warranted. Allowing a charge of manslaughter may resolve some cases of disputed killings that do not clearly fall into the categories of "murder" or "acquittal". Consideration also needs to be given as to whether another new offence should be created, such as "inappropriate or unlawful discharge of a firearm."

## Fair Trial

It is CAJ's opinion that when the whole array of emergency legislation covering pre-trial and the trial itself is considered, the possibility of securing a fair trial is put in grave danger.

Since the early 1970's allegations of ill-treatment of detainees in Northern Ireland have recurred frequently. In 1978 the European Court of Human Rights found in the case of Ireland v. United Kingdom that the United Kingdom was subjecting detainees to inhuman and degrading treatment in Northern Ireland. More recently, in November 1991, the United Nations Committee Against Torture looked at renewed allegations of ill-treatment and concluded that the United Kingdom had not fulfilled its obligations to prevent torture and ill-treatment.

Under this regime detainees can be held for up to seven days without being brought before a court. In 1988, the European Court of Human Rights found the seven day power to be in breach of the European Convention. The United Kingdom subsequently issued notices of derogation from the European Convention and the International Covenant on Civil and Political Rights. **The 7-day power should be repealed.** These arrests may be kept secret for the first 2 days.

Detainees are frequently denied access to their lawyers for up to the first 48 hours of detention and for intervals of up to 48 hours thereafter. There is no right for detainees to consult their lawyers in private. This is in direct contravention of paragraph 8 of the Basic Principles on the Role of Lawyers. **To remedy this situation suspects should be given the right to private consultations and to have their lawyers present during interrogations,** a right afforded to people arrested under the same provisions in Great Britain and under the ordinary criminal law throughout the United Kingdom.

At present a police officer not involved in the interrogation observes the interview via a silent, non-recorded television monitor. However, these monitors are not always watched and no disciplinary proceedings or criminal prosecutions of police officers have arisen from their use. In fact not one single complaint made by detainees in the last four years about ill-treatment during detention in the holding centres has resulted in disciplinary action against a police officer. Complaints against the police are investigated by the police. In spite of the failure to discipline police officers the Government of the United Kingdom has paid large sums of money each year to settle claims for alleged ill-treatment of detainees. In order to remedy this situation, **the authorities should arrange that interrogations be video and audio recorded.** This would provide concrete evidence of what takes place during interrogations.

The right to remain silent under questioning or at trial has been abrogated in Northern Ireland and thus undermines detainees' prerogative against self-incrimination. Furthermore, the standards governing the admissibility of confession evidence have been lowered to make it easier to admit

such evidence under emergency legislation. The overall thrust of these changes has been to tend to force the detainee to incriminate him or herself contrary to article 14 (3)(g) of the International Covenant on Civil and Political Rights. They are also in stark contrast to the 5th amendment of the United States Constitution. **The right to remain silent should be restored in full.**

When one includes the absence of juries, speculation that the small number of judges hearing high numbers of extremely serious cases become conviction prone/case-hardened, and statistics which suggest that around 90% of convictions are based on confession evidence alone the possibilities of miscarriages of justice become heightened.

CAJ is aware of at least 30 cases where those in prison allege that they are or (when they come to trial, sometimes after 2 years or more) are in danger of becoming victims of a miscarriage of justice. It is only relatively recently that prisoners have begun to publicly complain about their convictions, something which may arise out of the high-profile cases in England (Birmingham Six etc) and Northern Ireland (the UDR4) which have shown that public campaigning can result in convictions being overturned.

It is CAJ's opinion that **a radical review of the emergency criminal justice system is long-overdue.**

## Fair Employment

CAJ believe that the prevention of discrimination and the protection of equality is a fundamental principle of international human rights law. Problems of religious discrimination have been an ongoing problem in Northern Ireland since its inception and have contributed to the conflict. We believe that there is a need for tough and effective measures to tackle discrimination and we are not convinced that the existing Fair Employment legislation is adequate to the task. In particular we are concerned at the absence of damages for findings of indirect discrimination, the lack of legal redress for individual claims of discrimination and the convoluted and unsatisfactory provisions on affirmative action and contract compliance.

It is CAJ's view that there is a need for an **independent assessment** of the effectiveness of the existing legislation and that particular pressure should be applied to ensure **stronger measures in the areas of contract compliance and affirmative action programmes.**

## Collusion

We have been increasingly concerned about the evidence of collusion between elements within the security forces and loyalist paramilitaries and the failure on the part of government to address this. The collusion involves either the passing of security information or more active participation in illegal activities. Such has been the concern that an inquiry into the question of collusion was instituted by the police in September 1989.

This inquiry was completed in May 1990 by Mr. Stevens, Deputy Chief Constable of Cambridgeshire in England and resulted in a large number of arrests although it failed to satisfy public concern as it concluded that "leakages of information may never be completely eliminated." Since his inquiry a number of other leakages of information have come to light. Furthermore the inquiry failed to identify a single police officer involved in the collusion. One of those arrested



however was Mr. Brian Nelson. At his trial it emerged that he was working as a double agent for army intelligence and had infiltrated a loyalist paramilitary group. During this time he was involved in targetting people who were subsequently killed. Nelson claimed that on several occasions his army handlers were aware that these people were likely to be killed but did nothing to prevent their deaths. In spite of this no action has as yet been taken against those responsible for supervising Mr. Nelson and murder charges were dropped against him before his trial.

The Government has resisted calls for an inquiry into the Nelson case. Government inaction in the face of such damning evidence is a cause for major concern. The idea that security agents whose responsibility should be to preserve life have themselves been involved in the taking of life is deeply troubling and raises serious questions about the government's respect for human rights.

CAJ feels that there is an urgent need for a public inquiry into these matters followed by appropriate disciplinary action against those members of the security forces involved in the collusion. Failure to act against those responsible encourages further collusion.

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