

**Committee on the Administration of Justice**

***Northern Ireland affiliate of the  
International Federation of Human Rights***

**A submission to**

**the United Nations' Human Rights  
Committee**

***Containing Comments on the Fourth Periodic Report by the United  
Kingdom of Great Britain and Northern Ireland to the Human Rights  
Committee under Article 40 of the International Covenant on Civil and  
Political Rights***

**June, 1995**

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# 1. Summary of CAJ's Concerns

## 1.1 Emergency legislation & the Right to Silence

### *Derogation*

With the cessation of political violence in Northern Ireland there is no justification for the UK Government's continuing derogation from the ICCPR and the ECHR.

### *CAJ calls for*

the removal of the derogation from the ICCPR and the ECHR and abolition of the PTA power which allows suspects to be held for up to 7 days without charge or arraignment.

### *Repeal of Emergency Laws*

CAJ believes that the conflict in Northern Ireland did not justify the adoption of emergency laws. There has now been a ceasefire for 9 months. Our argument is that because there is no emergency there should be no emergency law.

### *CAJ calls for*

the repeal of emergency laws;  
failing the above an immediate review of the emergency legislation to ensure compliance with international human rights standards;  
guidance from the HRC on how best to ensure the effectiveness of such a review in terms of its independence and adherence to international law.

### *Right to silence*

The right to Silence has been severely undermined by the *Criminal Evidence (NI) Order 1988*. There is a discernable trend on the part of the Northern Ireland judiciary to increasingly rely on the provisions of this order which we believe may contravene Article 14.3 (g) of the ICCPR.

### *CAJ calls for*

the full restoration of the right to silence.

### *Exclusion orders*

CAJ holds that exclusion orders amount to internal exile. We are particularly concerned that the executive's decision to issue an order is not subject to effective judicial review.

*CAJ calls for:*

the abandoning of the use of exclusion orders and the restoration of the right to freedom of movement provided for by Article 12 of the ICCPR.

*Right to privacy*

In Northern Ireland emergency legislation permits arbitrary and intrusive house searches and questioning of individuals.

*CAJ calls for:*

the repeal of emergency legislation and the introduction of legislation which protects the right to privacy as provided for by Article 17 of the ICCPR.

*Police custody*

The treatment of detainees held under emergency legislation has been a cause of concern for bodies such as Amnesty, the UN Committee Against Torture and the European Committee for the Prevention of Torture.

*CAJ calls for:*

the right to private legal consultation for detainees. The present practice appears to contravene Article 14.3(b) of the ICCPR and the United Nations Principles on the Role of the Lawyer;  
the right for detainees held under emergency legislation to have their lawyers present during interrogations. This right applies in Britain but not in Northern Ireland;  
audio and video recording of interrogations;  
steps to be taken by the government in response to the conclusions of the CPT.

## **1.2 Lethal force**

*Plastic bullets*

17 people, some of them children have been killed by plastic bullets in often controversial circumstances. CAJ holds that plastic bullets are reckless weapons which are often used without justification.

*CAJ calls for*

the immediate end to the use of plastic bullets.

*Use of force*

CAJ contends that the law and provisions under which force can be used violate international human rights standards. Moreover, CAJ is concerned

about the failure of the police to thoroughly investigate cases of excessive and lethal force contrary to the UN principles on Effective Prevention and Investigation of Extra Legal, Arbitrary and Summary Executions.

*CAJ calls for:*

the amendment of domestic legislation in order to bring it into line with international legal standards and in particular those in Article 6 of the ICCPR;

the establishment of a statutory code for the use of lethal force.

*Inquests*

CAJ is concerned about the limited remit of inquests particularly when dealing with deaths caused by members of the security forces and the differences between the rules governing inquests in Northern Ireland and in England and Wales.

*CAJ calls for:*

a review of the rules governing inquests into the use of lethal force by security force members to ensure that they comply with the UN Principles on Effective Prevention and Investigation of Extra Legal, Arbitrary and Summary Executions;

changes in the laws and procedures governing inquests, in particular the rules relating to legal aid, the use of public interest immunity certificates, and the prior disclosure of witness statements to the legal representatives of the families;

the removal of current restrictions on inquest juries.

*Extra-judicial executions*

Security force members have caused 357 fatalities. Many of these incidents have involved the use of special forces. The attendant secrecy, lack of thorough investigation and prosecution have all reinforced the perception that the state operates a practice of extra-judicial executions.

*CAJ calls for:*

an independent public inquiry into allegations of extra-judicial executions;

the publication of the Stalker report.

*Collusion*

There is a strong suspicion that security force members have colluded with loyalist paramilitaries in a number of killings including that of prominent defence lawyer Patrick Finucane.



*CAJ calls for:*

an independent, public investigation into allegations of collusion between loyalist paramilitaries and members of the security forces;  
the publication of the Stevens report;  
an independent inquiry into the murder of Patrick Finucane.

### **1.3 Policing**

*Complaints procedures*

Emergency laws provide the security forces with extensive powers. CAJ notes that an effective complaints procedure is therefore of particular importance.

*CAJ calls for:*

a review of both RUC and British military complaint procedures to ensure that complaints are properly, thoroughly and independently investigated.

*Stop and search*

Indiscriminate stops and searches, under the emergency laws have led to a widespread perception of harassment by the security forces.

*CAJ calls for :*

an end to indiscriminate street stops and searches. When stops are deemed necessary, it is essential that they be conducted in a manner that is neither degrading nor intimidating.

### **1.4 Non-discrimination**

*Racism*

CAJ believes that the absence of legislation outlawing discrimination on the grounds of race in Northern Ireland is contrary to international law.

*CAJ calls for:*

the immediate introduction of anti-discrimination legislation in Northern Ireland which draws on and strengthens the Race Relations Act 1976 currently in effect in the rest of the United Kingdom. Such legislation should specifically recognise Travellers as a distinct ethnic group with corresponding rights to proper education, health, welfare and housing;  
the establishment of a commission to monitor and enforce anti-racist legislation;  
the HRC to indicate to the British government the urgency of such legislation and to ask for specific indications as to a time-scale for its introduction and details on its contents.

### *Irish language*

CAJ believes that the Irish language should be accorded full equality in law and in government policy.

### *CAJ calls for:*

the UK to ratify the European Charter for Regional and Minority Languages as the UK has acknowledged the importance of the Irish language for cultural diversity in Europe;  
the adoption of a policy that works to promote the Irish language. In this context special consideration should be given to funding for Irish language schools.

### *Religious Discrimination*

Protection against discrimination is a fundamental human right as recognised by Article 2 of the ICCPR. Problems with religious discrimination in Northern Ireland persist.

### *CAJ calls for:*

the ongoing review of the **Fair Employment Act 1989** to focus on what change has been brought about, what change is still required and how it will be implemented.

### *Sex Discrimination*

CAJ believes that the government has failed to deliver its obligations under the ICCPR in relation to the prevention of discrimination on the grounds of gender.

### *CAJ calls for:*

Adequate funding for the EOC(NI) and the provision of legal aid in discrimination cases;  
the amendment of Equal pay legislation to make it effective;  
improved provision in relation to maternity pay and conditions;  
the provision of adequate childcare arrangements.

**CAJ believes that previous interventions by international bodies and in particular the Human Rights Committee have been of great importance in the protection of human rights in Northern Ireland. Further interventions at this particular time from the Human Rights Committee will be of crucial importance in securing a just and lasting peace in Northern Ireland.**

## 2. About the Committee on the Administration of Justice

Established in 1981, the Committee on the Administration of Justice (CAJ) is an independent, non-Governmental organisation affiliated to the International Federation of Human Rights (IFHR). CAJ monitors the operation of the legal system in Northern Ireland to seek compliance with international human rights standards. CAJ has adopted no position on the constitutional status of Northern Ireland and is opposed to the use of political violence.

CAJ has sought to increase the attention which the international community gives to the human rights dimensions of the conflict in Northern Ireland. To this end we have, since 1991 made submissions to the **Commission on Human Rights**, the **Sub-Commission on the Prevention of Discrimination and the Protection of Minorities**, the **UN Human Rights Committee**, the **UN Committee Against Torture**, the **UN Committee on the Elimination of Racial Discrimination**, the **UN Committee on the Rights of the Child**, the **UN Special Rapporteur on extrajudicial, summary or arbitrary executions**, the **UN Special Rapporteur on impunity**, the **European Court on Human Rights** and the **European Committee for the Prevention of Torture**.

CAJ works closely with other national and international NGOs in order that our work regarding human rights in Northern Ireland benefits from the experience of other groups and is informed by an international human rights perspective.

CAJ activities include: publication of human rights information; conducting research and holding conferences; lobbying politicians; and individual casework and legal advice. CAJ's areas of interest include: policing; emergency laws; use of lethal force by security forces; children and young person's rights; prisons; gender equality, racism and discrimination; and advocacy for a Bill of Rights. CAJ's membership is drawn from across the community and is comprised of members of lawyers, academics, community workers, trade unionists and interested others.

### *Outline of the submission*

This submission begins with an overview of CAJ's views on the need for strong human rights protection in the context of on-going political developments in Northern Ireland. The main part of the submission deals substantively with the UK Government's report on a paragraph by paragraph basis, providing information which we hope will assist the HRC. Finally, a series of case-studies will give concrete examples of human rights concerns reported to CAJ.

### 3. Introduction: 1991 to 1995

The major development since the HRC's last consideration of the UK Government's adherence to the ICCPR has been the announcement of ceasefires by the main paramilitary organisations in Northern Ireland. This has given an unprecedented opportunity to resolve the long-standing conflict and move to a new era of peace and justice. However, issues which are the concern of the HRC played a major role in igniting the conflict in 1969 and have fuelled it since. Hope for genuine political progress must be coupled with a recognition that a lasting, peace will only be found if human rights are respected.

The HRC's consideration of the UK Government's commitment to respect human rights can have a major impact on creating a just peace. CAJ's experience since 1981 has been that the authorities in Northern Ireland have a less than wholehearted understanding of and commitment to the centrality of human rights protection. Rather, the Government has tended to be defensive about these issues and proactive in taking further powers it believes it needs to combat political violence. Indeed, with the end of paramilitary violence, the Government has shown no urgency in dealing with human rights issues which have been and are still being raised by both IGO and NGO human rights organisations such as the UN Committee Against Torture, the UN Committee on the Elimination of Racial Discrimination, the UN Committee on the Rights of the Child, the European Committee for the Prevention of Torture, Amnesty International, Human Rights Watch/Helsinki, the Lawyers Committee for Human Rights, the International Commission of Jurists, the International Federation of Human Rights and local NGOs like CAJ.

**It is CAJ's profound and respectful hope that the HRC will contribute to the development of peace in Northern Ireland by pressing the UK Government for:**

- the repeal of all emergency legislation, including;
  - the restoration of jury trial;
  - the right to have lawyers present during interrogation;
  - the end to extended detention periods and the closure of interrogation centres;
- the restoration of the right to silence;
- the establishment of normal policing and police procedures and the
- termination of all covert operations;
- the introduction of truly independent mechanisms for investigating complaints against the police and military;
- the establishment of an independent inquiry into outstanding and unresolved allegations of human rights abuses particularly in the field of police and military killings and collusion between members of the security forces and loyalist paramilitary organisations;
- the introduction of a Bill of Rights for Northern Ireland with an effective and well-resourced human rights commission; and
- the introduction of comprehensive anti-discrimination legislation.

## **4. Comments on the Fourth Periodic Report by the United Kingdom of Great Britain and Northern Ireland to the Human Rights Committee under Article 40, ICCPR**

This main section of our submission provides a paragraph by paragraph commentary on the UK's report to the HRC. The headings used in this section are those used by the UK Government. Paragraph numbers refer to the paragraphs in the UK Government report.

### *General Comments*

#### **Paras 1 - 9**

In para 4 the Government states that it "does not consider that it is properly the role of the legislature to confer rights and freedoms which are naturally possessed by all members of society." In the UK, basic human rights and civil liberties are not guaranteed and protection against abuse is fitfully applied. It remains perfectly legal in Northern Ireland to discriminate on the basis of race, social origin, disability, age, sexual orientation and, in stipulated circumstances, religion. A recent review of UK compliance with the ICCPR obligations of non-discrimination found: "The absence of a constitutional principle of equality and/or non-discrimination, and the patchwork framework of UK legislation, mean that substantial gaps exist between the Covenant and domestic implementation." (Lester and Joseph; 1994). As a result, there is widespread and consistent support throughout the UK for a Bill of Rights which would guarantee basic civil liberties. In Northern Ireland, all political parties support the introduction of a Bill of Rights for the jurisdiction.

In the recently published *Framework Document* the British and Irish Governments appear to agree that, in relation to Northern Ireland additional human rights protection in the form of a Charter of Rights is necessary. Sections in the Framework Document relating to rights were, however, vague. The HRC could play an important role in exploring with the UK Government what it envisages in this regard. CAJ hopes that strong commitment to the letter and the spirit of international human rights law will underpin any political negotiation and settlement and sees no reason why the effective entrenchment of rights should have to wait until after a political settlement has been reached.

### *Optional Protocol*

#### **Para 6**

The HRC in 1991 questioned the reluctance of the UK to ratify the Optional Protocol to the Covenant and inquired as whether the UK had considered incorporating the principles of the Covenant into domestic law.

We do not accept the Government's statement that ratification of the Optional Protocol is unnecessary. We are approached by many people in Northern Ireland who are convinced that they will not be able to obtain redress because of the bias of the courts and the prosecuting authorities in relation to protection of rights. Many are interested in the possibility of international scrutiny mechanisms. The possibility of lodging a case to the HRC would be a welcome additional protection. We note that Germany recently agreed to ratify the Optional Protocol despite long opposition.

## *Article 2: Equality*

### *Race relations*

#### **Para 24**

The Government states that the *International Covenant on the Elimination of Racial Discrimination* (ICERD) entered into force in the UK in 1969. It fails to mention that the Committee on the Elimination of Racial Discrimination found in 1993 that the UK was in breach of ICERD by not having legislation to outlaw racial discrimination in relation to Northern Ireland.

#### **Paras 34 - 36**

In April 1995, the Government finally announced its intention to introduce race relations legislation for Northern Ireland. There has still not been any indication as to the time-scale for this legislation. It is now over two and a half years since the consultation process. We are concerned at the lack of urgency in relation to this.

Minority ethnic groups comprise around 1% of the total population in Northern Ireland. There are 1115 individuals in 239 Traveller families living on sites in Northern Ireland, a majority in Belfast. 31 families were living on legal, temporary sites with minimal services, 131 families were living on permanent legal sites and the remaining 72 families were living in illegal, unserviced roadside camps. Officials have the power to evict families living in unauthorised areas at any time. *The Caravans Act (NI) 1963* authorises, but does not compel, authorities to provide serviced sites. The Traveller community must also face additional difficulties in gaining access to schools, proper health care and housing. Under the *Public Health (Ireland) Act 1878* and Article 8 of the *Roads (NI) Order of 1980*, officials have the power to evict families living in unauthorised areas at any time. Legislation in Northern Ireland neither explicitly recognises the Traveller community as an ethnic group with corresponding rights nor prohibits discrimination. The Traveller community must also face additional difficulties in gaining access to schools, proper health care and housing.

Other minority ethnic groups living in Northern Ireland have no protection from racial violence, harassment and discrimination. There is a substantial Chinese population, as well as members of ethnic Pakistani, Indian, Vietnamese, Traveller and other minority communities. CAJ continues to receive reports of abuse and discrimination against minority communities which include: violent and verbal attacks; discrimination in housing, employment and education; and inadequacies in both the criminal justice and health care systems.

### *Political and religious discrimination*

#### **Para 43**

Despite the assertion that the Government places "a high priority on removing obstacles to equality of opportunity" in Northern Ireland, a leaked memorandum from the Northern Ireland Office indicated that the Government did not expect there to be any improvement in the unemployment differential of over 2 to 1 between Catholic and Protestant males before the year 2000. Furthermore, a large number of cases which have resulted in findings of discrimination against employers have emerged from the public sector, which Government finances.

#### **Para 49**

The Government does not say that the employment profile of the RUC is 93% Protestant. Furthermore, because of the security role of the police in the violent conflict which recently ended, many believe that the political outlook and culture of the police is in favour of continuing the constitutional link with Britain rather than Irish unity or a neutral position. This makes the prospect of increased recruitment from members of the Nationalist community more difficult and does not bode well for acceptable policing.

#### **Para 56**

The review of legislation has now been passed to the Standing Advisory Commission on Human Rights. This was achieved on the basis of widespread criticism of the fact that the Government had asked a unit within Government to carry out the review. It is still very important that the review is seen to be independent and effective. There is still great need to ensure that resources are targeted to areas of greatest need which are also areas which have suffered most from discrimination in employment.

### *Article 3: Discrimination against women*

#### **Para 57**

CAJ takes the view that the legislative measures taken by the government to combat discrimination based on gender are in fact necessary to give effect to the rights contained in the Covenant rather than optional extras.

#### **Paras 59-62**

While it is indeed the case that the Equal Opportunities Commission for Northern Ireland has made an important contribution to promoting equality of opportunity its work has been considerably hampered by a lack of adequate funding. The Government's lack of commitment to the elimination of sex discrimination is clearly demonstrated by the huge disparity in funding between the Fair Employment Commission which deals with religious discrimination and the Equal Opportunities Commission for Northern Ireland.

The wording of para. 61 may obscure the fact that due to a lack of resources the Commission acts strategically in its decisions to take on cases. The absence of legal aid for discrimination cases means that there are a number of victims with meritorious cases who cannot pursue them because the EOC cannot offer them assistance. For those who do have the private means to finance their cases any compensation granted diminishes in its remedial value as the costs of taking the case must be met.

CAJ shares the concerns of the EOC for Northern Ireland that recent government proposals to amend tribunal procedures (See Resolving Employment Rights Disputes: Options for Reform) may result in "applicants in discrimination cases giving up their right to proceed to an industrial tribunal" because of burdensome and oppressive restrictions.

Para. 62 gives a false picture of the situation regarding Equal Pay Reviews and the government response to these in relation to Northern Ireland. The EOC (NI) has expressed its discontent with the government's refusal to engage in serious reform of Equal Pay legislation in spite of its repeated recommendations. As a result it has lodged an Article 169 reference case with the European Commission which argues that the Equal Pay legislation does not comply with European Law.

#### **Para. 63**

While the **Marshall** case and the subsequent regulations issued have tackled the problem of artificial limits on compensation in sex discrimination cases it remains to be seen if the level of awards will rise in practice. However it appears that the regulations in relation to compensation in equal pay cases do not meet with the **Marshall** requirements that financial compensation " must enable the loss and damage actually sustained... to be made good in full...". There can be no award for injury to feelings in these cases and there is an artificial limit of two years placed on the award of back pay. Restrictions have also been placed on the amount of interest which can be paid to victims in Equal Pay cases.

Concerns remain that Tribunals rarely award aggravated damages and that exemplary damages are not available to them. Furthermore, findings of indirect discrimination do not attract compensation of any kind.

#### **Paras. 64-66**

It is the CAJ's opinion that the changes made under the Trade Union Reform and Employment Rights Act 1993 fall well short of the right to equal treatment enshrined in Article 119 of the Treaty of Rome. In 1993 the EOC(NI) recommended that the right to 40 weeks maternity leave should be extended to all workers. As can be seen from the figures in para. 65 the government have failed to implement this.

The government makes no mention in this section of rights to maternity pay. Perhaps this is because the EOC(NI) has stated that the United Kingdom has the worst maternity pay provisions in the European Communities. The United Kingdom's



provision of maternity allowance has been found to fall approximately 75% short of the Council of Europe's Decency Threshold as applied to United Kingdom wages.

**Paras. 67-68**

If the government is totally committed to the elimination of sexual harassment then it should provide adequate funding to tackle this problem. The EOC(NI) has targeted sexual harassment as one of its current priority areas if women are to be fully integrated into the labour market. Whilst the government has agreed to the European Council Declaration endorsing a Recommendation and Code of Practice it has opposed an EEC Directive on Sexual Harassment which would have strengthened the legal obligations of both governments and employers in this area.

**Paras. 69-71**

The changes outlined in para. 70 have had the effect of equalising downwards. For example while female students can be joined by their spouses, the spouses of all students have had further restrictions placed on their ability to work. Widows under the age of 65 are now no longer allowed to join a person settled in the United Kingdom.

**Para. 72**

It is difficult to comment on the assertion that there is no evidence to suggest that women are dealt with more severely than men within the criminal justice system. Statistics on this area are badly kept because they are not generally broken down by gender. The same concern arises in relation to statistics on women as victims of crime. We would welcome action from the government to remedy this problem.

The Criminal Justice and Public Order Act recently abolished the need for a corroboratory warning to be given as a matter of law in sexual offence trials. This section does not extend to Northern Ireland where a jury must still be warned of the dangers of convicting on the word of a woman alone.

The law as regards the conduct of rape trials and admissible evidence in general is in serious need of review.

**Paras. 73-75**

CAJ is concerned at the absence of any reference to the provision of child-care in Northern Ireland which has been described by the Chief Inspector of the Social Services Inspectorate as being "piecemeal and lower than in other European countries."

*Article 4: Derogations*

**Para 79 - 80**

In addressing the Third Periodic Report of the United Kingdom to the HRC in 1991, the committee questioned the intent of the UK to review and perhaps withdraw current reservations to the Covenant. In the document entitled *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*

(issued on 29 July 1994), the HRC has stated that it "holds the view that measures taken under article 4 are of an exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened and that, in times of emergency, the protection of human rights becomes all the more important, particularly those rights from which derogations cannot be made" (page 6).

In seeking to justify continued derogation, the Government relies on the European Court's conclusion based as it is on "the nature of the terrorist threat in Northern Ireland". Members of the HRC will be aware that the paramilitary organisations declared ceasefires in August and October 1994. These have held for 9 months despite major doubts that they would last. However, the Government continues to insist on maintaining its battery of emergency powers. In March 1995, the *Prevention of Terrorism (Temporary Provisions) Act* was renewed, including the 7 day detention power. In June '95 the Government renewed the *Northern Ireland (Emergency Provisions) Act 1991* without amendment. This worrying development appears to indicate that the Government feels no urgency in moving away from reliance on emergency powers such as the one which led to this derogation. The "nature of the terrorist threat" has completely altered with the paramilitary organisations clearly intent on moving to non-violent forms of political activism. In light of this we wonder whether the UK Government is sufficiently aware of the *temporary* nature which exceptional powers are intended to have. The comments of the HRC concerning what factors may be considered in defining the existence of such an emergency would be helpful in informing debate in the UK on this issue.

Addressing the 7 day provision of the PTA, the CPT in a 1993 report to the UK stated: "Seven days in police custody without charge is a long period of time. Even if the continued application of exceptional measures relating to the detention of persons suspected of terrorist activities is considered necessary, the CPT wonders whether there might not be scope for some reduction in the maximum period of police custody which is possible under those measures." (*CPT/94/6 para. 105*)

## *Article 6: Right to life*

### *Police and military use of firearms*

#### **Para 96**

Though the Government quotes the tragic figures of police officers and soldiers killed by paramilitary organisations, principally the Irish Republican Army (IRA, a nationalist republican paramilitary organisation), no figures are given for the number of people - both paramilitary members and non-involved civilians - killed by the police and military. It is particularly disingenuous to focus on the first extended period in the 25 years of conflict - since November 1992 - when the number of such killings has significantly decreased. The Government also fails to mention the fact that Robin Maxwell was killed by police officers in January 1994 during an attempted armed robbery of a petrol station in Donaghadee. Mr Maxwell was carrying an imitation firearm. Also, Mr Aaron Love was knocked down by a police land-rover in controversial circumstances in May 1994. On

both occasions, the families approached CAJ and expressed dissatisfaction and anger with the killing itself and also with the investigations which they felt were self-serving and the failure of the authorities to keep them informed of developments.

In fact over 10% per cent of all deaths from 1969 - 94 were caused by police and military use of firearms. The most commonly cited figure for such deaths is 357.

#### **Para 97**

There have been some 30,000 police and military for a population of 1,500,000; a ratio of around 1 in 50. They all carry weapons. The Government has changed the law in many respects to assist the security forces in dealing with the conflict. And yet they have refused to change the law as it relates to the use of force. The reasonableness standard is unnecessarily vague in comparison with the more stringent tests in both the ICCPR and the ECHR. Legal interpretation by the courts has made the law even vaguer. A recent case removed any objective element in determining the lawfulness of opening fire if the defendant could show that the force used was based on an honest though mistaken belief that his life was in danger (See *R. v Hanley*). In this situation the police and military are practically immune from facing the consequences of opening fire (see below for prosecutions and convictions).

A further suspicion in relation to the use of force is that police and military, particularly when elite units are involved, will ensure that, when they engage those suspected of being members of the IRA, no-one survives that engagement. Four recent examples may illustrate the problem.

At the inquest into the death of Seamus McIlwaine (who was killed by British army undercover operatives in 1986) held in Enniskillen in January 1993, the jury finding indicated that he was shot dead after having been wounded and questioned by soldiers. The jury wished to add that the dead man could have been arrested but this part of their finding was taken out as it touched on the question of liability which is no longer open to the jury to comment upon.

In 1987, 8 IRA members and 1 civilian were killed by special units of the British army during an IRA attack on a police station in Loughgall. The inquest was held in May 1995. At the inquest, it emerged that the security forces had prior information about the attack. 3 police officers and 6 soldiers were in the building. 18 other soldiers - in 5 positions - surrounded the police station. When the attack was launched, the soldiers opened fire with sub-machine guns and three General Purpose Machine Gun. Over six hundred bullets were fired. When the soldiers approached the van, further shots were fired. Included in one soldier's written statement was the fact that "a warning shot" was fired "into the body" of one man who was seen to make "a sudden movement" in the back of the van. Solicitors who have seen forensic photographs of the bodies say many had bullet holes in the side of the head. Their suspicion is that those who were not dead were given *coups de grâce*. In another incident when 3 men were killed by an elite army unit in January 1990 during an attempted robbery, forensic examination showed that the driver of the getaway car was killed from a range of around 60 cm. He was unarmed

and sitting in the car waiting for his colleagues to come out of the premises which were being robbed. The two who emerged were killed as they ran out. The inquest into this incident took place in the autumn of 1994. Eye-witnesses alleged that the soldiers shot the two men as they were lying wounded on the ground. Legal challenge forced the quashing of the jury finding and a new inquest will take place in September 1995. In November 1992, Pearse Jordan, an IRA member though, according to the IRA, not involved in an operation at the time of his death, was killed by police in Belfast. Five eye-witness statements made to CAJ indicate that no attempt was made to arrest him. He was unarmed. According to eye-witnesses, he was shot dead from a distance of about 4 metres as he ran from the car he was driving after it had been rammed by two police vehicles. Once again, the inquest, which opened in January 1995, has occasioned extensive litigation and is suspended pending the outcome of judicial review proceedings.

We note that the HRC, in its general comments on Article 6 (taken from the *Report of the HRC to the 37th Session of the General Assembly, A/37/40, pp 93-94*), states that the right to life is "the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation....It is not a right which should be interpreted narrowly". The UK Government emphasises the danger which actions by paramilitary organisations pose, a danger which is all too clear. It is the opinion of many observers and commentators that an unwritten understanding exists by which the "arbitrary deprivation of life" in contravention of Article 6 is tolerated by the authorities (See, for example, Mark Urban, *Big Boys Rules*, Faber).

Paragraph 4 of the HRC General Comment referred to above states that "The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his (sic) life by such authorities." The above makes clear that, in CAJ's opinion, the legislation and consequent legal interpretation fails to provide the strict control required by the HRC.

During the 1991 session, HRC members expressed concern regarding an alleged shoot to kill policy and asked whether the Government had taken measures to "avoid the recurrence of such cases". It is a welcome development that the use of élite units appears to have declined since then.

#### **Para 98**

It is difficult to comment on the Discipline Code given the fact that the RUC refused to let even the CPT have sight of it. This is indicative of the lack of transparency of the Northern Irish police. While reference is made in court cases to the rules of engagement mentioned, they are clearly over-ridden by the legislation. The Government appointed Standing Advisory Commission on Human Rights has proposed that there should be a statutory Code for the use of lethal force. The Government have refused this advice. With regard to training, the indications from statements made by military personnel at the inquest in Gibraltar in 1988 (into the death of 3 IRA personnel) are that, when opening fire, military and police aim at the largest body area and keep

firing until the person is dead. This is particularly the case in incidents involving special forces. At his trial for the murder of Karen Reilly, Private Lee Clegg stated that soldiers are not trained to fire warning shots in Northern Ireland.

### Para 99

The key issue concerning investigations is lack of independence. On the two occasions in the last ten years when non-RUC officers have carried out investigations, they have uncovered deeply disturbing patterns of activity. John Stalker, a senior English police officer, investigated 6 killings in the early 1980s when there appeared to be a shoot-to-kill policy in operation. In that case, the then Attorney General (and now Secretary of State for Northern Ireland) Sir Patrick Mayhew, decided that no prosecutions should be brought against 8 members of the security forces despite the fact that there was evidence of perverting the course of justice. John Stevens, another senior English police officer, investigated evidence concerning collusion between members of the security forces and loyalist paramilitary organisations. Mr Stevens unearthed a security force agent, Brian Nelson, who was charged with involvement in various murders. The charges were reduced and he was convicted of conspiracy to murder and sentenced to 10 years. A recent report in the **Sunday Times** newspaper (14th May 1995) indicates that further investigations by John Stevens produced evidence that 4 security force personnel were involved in "loyalist assassinations". However it has been decided no prosecutions will ensue.

The Nelson case raises serious questions as to the extent of security force collusion with loyalist paramilitaries. Amnesty International reports that it: "has not been convinced that the Government has taken adequate steps to halt collusion, to investigate thoroughly and make known the full truth about political killings of suspected Government opponents, to bring to justice the perpetrators and dismantle "pro-state" organisations dedicated to political violence, or otherwise deter such killings." (*Political Murder in Northern Ireland, 1994*)

Given this record, it is understandable that there is a lack of confidence in the independence of investigations carried out by the Northern Irish police.

Furthermore, the picture painted of various agencies of Government all operating independently is less than convincing. The RUC investigation and the DPP's involvement are all secret and take long periods of time. It will generally take six months for the police to send their conclusions to the DPP and it takes a further six months to decide on whether to prosecute. In the overwhelming number of cases (see next para) there are no prosecutions. Very little information is given to the families, many of whom have told CAJ that they feel they are treated with suspicion because they do not accept the official version as to how their relative was killed.

As has been indicated above the inquest is often the only public forum where there is a public airing of the facts of incidents in which people are killed by members of the police and military. These are characterised by long delays and extensive litigation. There have been many calls for reform within Northern Ireland which the Government refuses

to entertain. Discovery of evidence is not allowed until particular witnesses take the stand to testify. Thus the families of victims cannot study the material in advance. Legislation in 1980 took away the power of the jury to enter a verdict, though the power of juries to enter verdicts of, for example, unlawful killing remains in England and Wales. In Northern Ireland, juries can now only make findings as to the circumstances of the death. A recent judicial review judgement (*In re Anne Bradley and Harriet Larkin*, April 1995) has indicated that these findings can only state minimal information concerning how, when and where the deceased met his/her death rather than examining the circumstances surrounding the death. There is no legal aid for families though senior counsel for the army and/or police and the Government is paid from the public purse. The authorities' legal advisors will also have been able to study the evidence prior to the inquest. Furthermore, the frequent implementation at inquests of Public Interest Immunity Certificates (invoked on a number of occasions since 1991) reinforce community perceptions that a 'shoot to kill' policy has existed. Finally, in Northern Ireland - unlike in England and Wales - those who caused the death do not have to appear to answer questions which may arise from their written statements. This practice appears to contravene *UN Principles on Effective Prevention and Investigation of Extra Legal, Arbitrary and Summary Executions*.

These Principles call for "prompt, thorough and impartial" inquiries. The procedures followed by the authorities in Northern Ireland fail to meet these requirements. The General Comment of the HRC referred to earlier calls on States to "adopt positive measures" to ensure that "the inherent right to life" is not "understood in a restrictive manner" (paragraph 5). The authorities have sought to point to the situation of violent conflict which has obtained in Northern Ireland when confronted by the factors surrounding security force killings. To the contrary, a determination to establish an open, speedy and independent system for examining these incidents would ensure that the authorities' intentions were not open to misunderstanding.

#### **Para 100**

An analysis of figures concerning prosecutions and incidents of killings shows a marked rise in the former and reduction in the latter since the last consideration of the UK Government by the HRC in 1991. CAJ is grateful to the HRC for its concentration on this issue in 1991.

9 soldiers and 1 police officer have faced prosecution since then on a variety of charges. These resulted in 4 convictions, three for murder and one for attempted murder. This latter conviction was reduced on appeal.

It is clear from the lack of killings since 1991, that the relative increase in the likelihood of prosecution has led to greater carefulness in the use of force by the police and military and this has been a welcome development. In particular, there has been a marked decrease in the use of elite army units.

One issue which emerges from the pattern of prosecutions is that there has been a refusal to consider prosecution of members of elite units despite the fact that suspicions

of "arbitrary deprivation of life" are greatest when these have been responsible for deaths.

It remains the case that the 357 deaths caused by members of the security forces between 1969 and 1994 have led to only 7 convictions (arising out of 5 incidents in which 7 people died). 4 of these convictions were for murder, 1 for attempted murder and the remaining 2 for manslaughter, when it was found that there was no deliberate intention to take life. This remains an appallingly low rate of conviction, leaving many families who have contacted CAJ feeling that their relatives were deprived of life without their having any proper redress.

#### **Para 101**

Since 1969, seventeen people have been killed by the use of plastic or rubber bullets. Eight of the victims have been children under the age of 16 years. Ostensibly the use of plastic bullets is limited to riot control. In ten of the fourteen deaths resulting from the use of plastic bullets, however, security force contentions that the victim had been involved in rioting have been refuted by eye-witnesses or by the judge or coroner conducting the inquest. Only one member of the security forces (RUC) has been charged in connection with deaths resulting from the use of plastic or rubber bullets. He was acquitted.

The use of plastic bullets continues even in the wake of the ceasefires. They have recently been used during disturbances at football matches and it has been alleged to CAJ that they have been fired indiscriminately at people exiting from dances in Cookstown, Co. Tyrone in situations of very minor trouble. The use of plastic bullets in such circumstances exacerbates situations that could be brought under control by less dangerous police methods. It remains CAJ's view that these weapons are dangerously lethal and used when they are not necessary.

#### **Para 109**

The two prisoners who committed suicide in 1994 were both in Crumlin Road Prison, the remand prison. This prison is now due to be closed but was the site of extensive rioting in the summer of 1994. After the rioting, paramilitary prisoners were moved to the Maze prison. According to information given to CAJ some prison officers at Crumlin Road treated the ordinary prisoners vindictively after the more organised paramilitary prisoners were moved. The families of these prisoners made strong representations to CAJ and other concerned organisations that the attitude of prison officers contributed to a deteriorating atmosphere which led these prisoners to commit suicide.

### *Article 7: Freedom from torture, cruel, inhuman or degrading treatment*

#### **Para 113**

The examination of the UK Government by the Committee Against Torture (CAT) which took place in 1991 led to severe criticism from the Committee. This related in particular to the regime governing the detention of people held in interrogation centres in Northern

Ireland. The Committee expressed satisfaction at procedures in the rest of the UK but was not able to say that the Government was fulfilling its obligations under the Convention Against Torture with respect to Northern Ireland and commented: "the implementation of the Convention in Northern Ireland was far from satisfying."

Following the CAT conclusions, CAJ noticed a marked difference in the type of allegations concerning ill-treatment during detention and interrogation. There was a reduction in allegations of physical ill-treatment though allegations concerning psychological ill-treatment continued and even increased.

#### **Para 116**

The Government fails to note the conclusions of the CPT following its visit to Northern Ireland. The report was published in November 1994 but was known to the Government before their 4th report to the HRC was published. The CPT concluded that detainees in Northern Ireland arrested under emergency legislation are at "significant risk of psychological forms of ill-treatment". They further conclude that police officers on occasion resort to physical ill-treatment. The visit of the CPT in July 1993 was an *ad hoc* visit rather than a periodic visit. These are carried out when the CPT considers such a visit "to be required in the circumstances". The circumstances in this instance concerned persistent allegations of physical and psychological ill-treatment, both at arrest and during detention, of persons suspected of paramilitary offences. Despite an exchange of information, the CPT was not adequately reassured by the responses of the UK Government and visited Northern Ireland in July 1993 (see paras 4 - 7, *CPT/Inf (94) 17*). It would be helpful if the HRC could ask the UK Government representatives what steps it has taken to respond to the conclusions of the CPT.

#### **Para 117**

Given the conclusions of the CAT and the CPT, we disagree with the contention of the UK Government that "the prohibition against torture and other cruel, inhuman and degrading treatment ... is universally understood throughout the UK".

#### **Para 118 - 119**

These paragraphs appear to draw a distinction between England and Wales and the rest of the UK in terms of training. The extent and content of training for police officers in Northern Ireland is unknown. Mention has been made earlier of the fact that the RUC refused to even allow the CPT to have a copy of the RUC Code, despite the fact that the CPT treats such documentation confidentially. Following the CAT examination in 1991, CAJ wrote to the RUC Chief Constable asking for information concerning training programmes for police officers conducting interrogations. No reply was ever received. It would be helpful if the HRC could request information on police training.

#### **Para 121**

The UK Government says that there has been no "previously identified instance of torture" in the UK. This fails to acknowledge the finding of torture by the European Commission on Human Rights in 1978 in the case **Ireland v. UK**. In the subsequent



European Court judgement, the UK was found to have been guilty of "inhuman and degrading treatment".

### *Confession evidence*

#### **Para 124**

The admissibility standard governing confessions for scheduled or "terrorist"-related cases set out in section 11 of the Northern Ireland (Emergency Provisions) Act 1991 is lower than for confessions under ordinary law (which is set out in the Police and Criminal Evidence (NI) Order 1989 and parallels the English standard set out in para 123 of the Government's report). Under the EPA defendants must raise *prima facie* evidence of torture or other cruel, inhuman or degrading treatment or violence or the threat of violence and the prosecution must then disprove it. Under PACE the less taxing standard of oppression, or anything said or done likely to render the confession unreliable is used. Thankfully, judicial rulings which indicated that a measure of ill-treatment will not of itself rule out confessions have now been superseded and judges will use their discretion to rule out confessions more frequently. However, it must be remembered that interviews under the EPA are carried out without the presence of a solicitor and silence can also be used as evidence against someone subsequently charged with an offence. Furthermore there is no electronic recording of interviews which would provide an independent record of the conduct of the interview. This package constitutes a formidable obstacle to the possibility of a fair trial.

Silent, non-recording monitors remain the only safeguard. During a 1993 investigation, however, the CPT concluded that the closed circuit television monitoring system "is not a foolproof means of detecting physical ill-treatment of persons detained at the holding centres or of preventing unjustified allegations of physical ill-treatment." (*CPT/94/6 para 78*) Sir Louis Blom-Cooper, the Government-appointed Independent Commissioner for the Holding Centres has also concluded that this safeguard is meaningless.

### *Police Complaints*

#### **Paras 147 - 151**

The Independent Commission for Police Complaints (ICPC) has itself asked for further powers in order to deal with its problems of public credibility. The Government has refused to make any major substantive changes in regard to the powers of the ICPC. One potentially significant change made recently is that the Government have announced their intention to lower the burden of proof in disciplinary proceedings. However, guidelines are to be produced and the Government statement speaks of a "sliding scale" depending on the seriousness of the alleged offence. It is too early to say how this will work in practice. No guidelines have yet been published.

Problems of credibility arise primarily from the failure of the complaints system to substantiate a single one of the complaints of assault and other ill-treatment arising out of the regime of emergency detention and interrogation over the last 6 years. The table set out at para 148 of the Government's report shows a rate of substantiation in relation

to all complaints of roughly 1%. This is not a figure which inspires confidence in the effectiveness of the complaints procedure.

The key difficulty is that the complaints are investigated by the Complaints and Discipline Branch of the RUC and merely supervised by the ICPC. The Government has resisted suggestions made by CAJ to establish an independent investigative mechanism for complaints. This would be an important measure in seeking more transparency and accountability within policing in Northern Ireland.

### *Lay visitors*

#### **Para 153**

Despite the lay visitors own preference to do so, the Government has not given them the power to carry out visits to the detention centres at which people arrested under the EPA are held and interrogated.

### *Military complaints*

#### **Para 157**

The Government, refers selectively to a report issued by David Hewitt, an independent Government appointed assessor of military complaints. Mr Hewitt found that of the 606 complaints that were lodged against the British military in 1993 (which included 142 charges of harassment or abuse), only 26 cases (12% of formally investigated cases and 4% overall) were substantiated. In assessing the military complaints procedure, Hewitt states "these statistics are bound to create dissatisfaction among many observers. In my opinion, much of this dissatisfaction is justified..." and he concludes, "The bottom line is that in 1993, out of 336 complaints informally investigated and 210 complaints formally investigated, disciplinary action was taken in a very small number of cases, and was severe in only one case."

In relation to both police and army complaints, while the majority of intimidation and harassment complaints against security forces are made by the nationalist community, complaints are being lodged by members of the loyalist community also. Commenting on security force practices in republican areas, a 1991 Helsinki Watch report stated: "In these areas, persons are repeatedly stopped, questioned and searched by heavily armed security personnel in what appears to be either random conduct, with no cause to believe that the individuals are involved in any unlawful activity, or purposeful stops based on the subject's political views or association."

A 1993 research study conducted by CAJ found that 25% of young people (50% of Catholics and 12% of Protestants) have experienced harassment through the use of stop, question and search powers, at random vehicle checkpoints or in house searches. Other forms of harassment and intimidation commonly reported include recruiting or attempting to recruit informers, the use of helicopters flying low for long periods of time over a particular or isolated area and the issuing of death threats.

Because of the extensive powers and sheer number of security force personnel, the most effective safeguard against such harassment is an effective complaints mechanism. Unfortunately, both in relation to police and military complaints there is no independent investigative machinery. Rather police carry out investigations supervised by the Independent Commission for Police Complaints (ICPC). The complaints system is characterised by extremely low rates of substantiation. In particular, in the last 6 years not one complaint arising out of emergency detention and interrogation has been substantiated.

### *Article 9: Right to liberty and respect of the person*

#### *Police and military powers in Northern Ireland*

##### **Para 180**

The Government fails to point out here that the right to silence has been severely eroded since 1988 for both ordinary and emergency arrests by the *Criminal Evidence (NI) Order 1988*.

##### **Para 181**

Individual members of the HRC expressed concern in 1991 regarding emergency legislation which gave security forces excessive power and impeded full implementation of the Covenant. We refer again to the General Comment concerning derogations (see under para 79-80) where the HRC has stated that it "holds the view that measures taken under article 4 are of an exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened and that, in times of emergency, the protection of human rights becomes all the more important, particularly those rights from which derogations cannot be made".

Despite the end of paramilitary violence which occasioned the introduction of emergency legislation contained in the EPA and PTA, the authorities have not modified one piece of the legislation (see comments under Article 4, derogations). The intervention of the HRC will be important in ensuring that meaningful deliberation is given by the Government to a review of the need for emergency measures in the run up to the end of the EPA's five year term in August 1996.

CAJ would like to see a properly independent review of this legislation in the coming year. The independent reviewer mentioned by the Government, Mr John Rowe QC, refuses to see his remit as including a consideration of the necessity for emergency measures and appears to reach conclusions solely on the basis of briefings from the security forces. In his most recent report he reports that police say that particular powers come in useful "from time to time" or "may come in useful". This seems a very arbitrary approach to the exceptional powers contained in the EPA.

At the EPA renewal debate on 12th June 1995, the government announced its intention to hold an independent review of emergency legislation in the coming year. Guidance

from the HRC would be an important contribution in ensuring the effectiveness of the review in terms of its independence and adherence to international law.

**Para 183**

Reference has already been made in these comments to the holding centres. The Commissioner for the Holding Centres has recently been given power to sit in on interviews. The Commissioner's second annual report makes the observation that the ordinary criminal justice system is well able to deal with any criminal activity which is currently being investigated. In view of his opinion that there is no further need for the use of emergency procedures, it is of concern that the Government and the police maintain their determination to keep these powers on the statute book.

**Para 193**

Despite the failure of the complaints system to substantiate any complaints of assault arising out of interrogations under emergency law, large sums are paid out in compensation, usually in out of court settlements with a denial of responsibility. Solicitors have informed CAJ that their clients must sign a statement saying that they will give no publicity to the circumstances of the compensation payment.

*Article 10: Humane deprivation of liberty*

*Life sentence prisoners*

**Para 224**

The distinction outlined here between discretionary life sentence prisoners in Northern Ireland and those in England and Wales is unjustifiable. While the number of these prisoners is small, it is not acceptable that they should be denied the rights outlined in para 222 of the Government's report simply because they are detained in Northern Ireland.

**Para 229**

In our view, the distinction between the release mechanisms for mandatory and discretionary life-sentence prisoners (lifers) is unacceptable. Mandatory lifers should have access to the same protections as discretionary lifers. The Government fails to highlight the fact that in Northern Ireland, mandatory lifers do not have access to the dossier of papers considered by the Life Sentence Review Board as is the case in England And Wales (see para. 227). Such discrimination is unacceptable. Consideration should be given to the abolition of indeterminate sentences and their replacement by fixed-term sentences.

*Throughcare*

**Para 243**

As a result of the ceasefires in Northern Ireland, there is a realistic prospect that large numbers of prisoners will be released as part of an overall settlement. If this is indeed the case, it is essential that there is a comprehensive package of measures in place to assist with their re-integration into society.

## *Secure accommodation for children*

### **Para 281**

The legal basis for secure accommodation in Northern Ireland is far from certain. The *Children (NI) Order 1995* is not yet in force but will provide a legal base for the use and review of secure accommodation. CAJ has a number of concerns about the current lack of adequate safeguards for children held in secure accommodation and in particular is concerned at the regime in Lisnevin, an institution which functions as a prison for boys.

## *Article 12: Freedom of Movement*

### *Exclusion orders*

#### **Para 285**

Despite the fact that ceasefires have been in force for nine months a number of exclusion orders remain in force. The Secretary of State for Northern Ireland has rescinded all the orders for which he is responsible (excluding people from Northern Ireland), many orders imposed by the Home Office Minister, Mr Michael Howard ( which prevent people resident in Northern Ireland from travelling to Britain) remain in force. CAJ is concerned that only those high profile excludees, such as high-ranking members of Sinn Fein, have had their exclusion orders revoked. CAJ is also aware of a number of cases where exclusion orders have lapsed and no effort has been made to inform the excludees of the fact that they can now travel freely. This power amounts to a form of internal exile and is used in the absence of evidence which would be admissible before a court of law.

#### **Para 286**

The English Court of Appeal has withdrawn the cases referred to the European Court of Justice because the exclusion orders on which the judicial reviews were based have been lifted. This has deprived the complainants of the possibility of independent, international assessment of the legality of the power under European Community Law. The suspicion arises that the Government realises that the power infringes international law and is reluctant to have it tested.

## *Article 14: Right to a fair trial*

This was an issue about which the HRC had concerns in 1991, arguing that there is, in Northern Ireland an implicit derogation from Article 14.

A fair trial point to which the Government does not advert is allegations of intimidation and harassment of lawyers. This represents a worrying infringement of due process protection. In the *Harvard Human Rights Journal* (Spring 1994), Martin Flaherty states "Northern Ireland lawyers are the victims of apparently systemic official harassment for fulfilling the requirement of their profession; as lawyers better complete their tasks, harassment increases." The findings were based on evidence compiled by the Lawyers Committee for Human Rights in 1992. When they interviewed defence lawyers they

concluded that "...nearly every lawyer who engages in representation of defendants under the Northern Ireland emergency legislation has experienced some form of official intimidation." This followed similar conclusions in a 1991 Helsinki Watch Report.

Following the 1989 murder of Patrick Finucane, a well known and successful defence lawyer in Belfast, by the Ulster Freedom Fighters (UFF, a loyalist paramilitary organisation) allegations of collusion between loyalists and the security forces emerged. A client of Finucane, Brian Gillen, reported to Amnesty International in 1988 that during interrogation he was told his solicitor would be shot dead by loyalists. These suspicions were strengthened by evidence that emerged during the trial of Brian Nelson who served as a double agent for the Ulster Defence Association (linked to the UFF) and the British Army at the time.

The Government still refuses to institute an independent inquiry into concerns around intimidation of lawyers generally and the murder of Pat Finucane in particular.

### *Time limits*

#### **Para 312**

Mention must be made of the case of the Ballymurphy 7 which involved 7 young men, a number of them 17 at the time of their arrest. They were charged and tried for a murder attempt on members of a British army patrol in the Ballymurphy area of Belfast. The evidence consisted only of confessions, obtained according to the defendants by physical and psychological brutality. The trial lasted into the fourth year of their custody. Eventually all the defendants were acquitted; some because their confessions were ruled out and the final three when it emerged that the prosecution had not made substantial relevant documentation available to the defence. The case became a *cause célèbre* with many convinced of their innocence from the start. The length of the whole procedure was an added injustice for which there is no possibility of redress. When acquitting one boy who had been in jail for nearly three years, the trial judge Mr Justice Brian Kerr told him that he hoped "he had profited from the experience". In his final judgement, Kerr J. noted that the bulk of the trial had been taken up with testing the confession evidence. He pointed out that an electronic recording of the interviews would have made what took over a year a matter of weeks. Despite this very obvious solution to the problem of length of trial, the police and the Government remain opposed to electronic recording of interviews.

It is worth stating that Kerr J. explicitly pointed out in his judgement that his acquittal of the Ballymurphy 7 "should not be taken as a resounding vindication of their innocence". He said that they were "the less than deserving beneficiaries of an inadvertent lapse on the part of the prosecution authorities". Such an approach by a senior judge is a matter of serious concern in light of the requirement of Article 14.2 ICCPR that everyone must be presumed innocent until proved guilty. Such an approach follows an earlier ruling by the Northern Ireland Lord Chief Justice, Sir Brian Hutton, in the case *R v. Nash* when he impugned the innocence of the defendant despite acquitting him.

### *Compensation for wrongful conviction*

#### **Para 314**

The Government refers to 3 cases where compensation has been paid to victims of miscarriage of justice. The victims' names are Noel Bell, Winston Allen and James Hegan who were found in 1992 to have been wrongfully convicted of murder because it was found that police mal-practice was used in the extraction of confessions and the writing of interview notes. Unaccountably, another man, Neil Latimer, was not released despite the fact that most of the police mal-practice emerged in his case. He remains in jail pleading his innocence. The case has not led to any improvements in the safeguards for detainees being questioned by police under emergency law except that notes of interviews are kept under additional security. The Government maintain their refusal to install electronic recording of interviews and will not allow lawyers to be present to advise detainees held under emergency legislation during questioning, although this happens in Britain.

### *Royal Commission on Criminal Justice*

#### **Para 315**

The remit of the Royal Commission was limited to a consideration of the criminal justice system in England and Wales. The emergency regime in Northern Ireland has not had a thorough-going review since the current incarnation of emergency law was instituted in 1973. Many changes have occurred since then both in the level of violence and in the extent of reliance on emergency law. There have also been growing allegations of miscarriages of justice. With the disavowal of politically-motivated violence by paramilitary organisations, it would be appropriate for an exhaustive review of the criminal justice system to be undertaken. So far however the Government have not indicated that they intend to adopt this common sense approach. The danger is that police officers, used to the extent of emergency powers might make a poor transition to ordinary law.

#### **Para 316**

The Criminal Cases Review Authority as proposed will not have a separate body to deal with Northern Irish cases despite the fact that the jurisdictions are separate and many of the cases in Northern Ireland arise from emergency law. The Government has not given the Authority its own investigative powers and it will have to rely on the police to carry out additional inquiries. Given the fact that most miscarriages of justice spring in the first place from alleged police malpractice, this is a regrettable missed opportunity to ensure independence. CAJ is aware of around 30 cases where there are considerable doubts about the safety of convictions. In particular we would mention the cases of: Patrick Kane, Michael Timmons and Sean Kelly convicted of murdering 2 undercover soldiers in 1988; Thomas Green, convicted of murdering a catholic in 1986; Hugh Hanna, convicted of murdering a catholic in 1976; Barry Murray, convicted in 1989 of explosives offences.

We are also concerned that the basis on which the new authority can review cases may make it more rather than less difficult for alleged miscarriages of justice to be re-considered.

### *Right of silence*

#### **Paras 320**

On the contrary, legal judgements by the Northern Irish judiciary have shown that wider and wider inferences are being drawn from silence. The effect of the changes has been that the defendant, by his or her silence, extends considerably the prosecution case giving rise to a real infringement of the privilege against self-incrimination and the presumption of innocence. There is a sense in which silence is being used to bolster a prosecution case which otherwise would not reach the requisite standard of proof beyond reasonable doubt.

#### **Para 323**

The Government has refused to entertain the notion that people may have innocent reasons for remaining silent: they may be scared that the police will mis-represent what they say; they may belong to a group or community which has good cause to be suspicious of the police; they may have reasons unrelated to the offence under investigation for not wishing to speak.

#### **Para 325**

It must be remembered that in the context of Northern Ireland emergency law, the changes to the right of silence operate in tandem with the absence of legal advice. It was this confluence of factors which led the European Commission on Human Rights to find, in *UK v. Murray*, that there had been a breach of the applicant's right to a fair trial (See para 327 of the UK Government's report). Once again the absence of electronic recording of interviews for suspects arrested under emergency law adds to the coercive regime within which the abrogation of the right to silence operates.

#### **Para 326**

The Government has shown no research or evidence to prove that the changes will make conviction easier. Despite the fact that the changes have been in place in Northern Ireland have been in place for 7 years, no government research on its effects was taken into account. To CAJ's knowledge, research has been carried out but it has not been published. Research conducted and published by CAJ and JUSTICE, the UK affiliate of the International Commission of Jurists, has shown that judges, after an initial caution, have drawn wider and wider inferences from silence.

When the Government introduced the changes to the right to silence in Northern Ireland in 1988, it was claimed that the measure was necessary because "terrorists" were trained in anti-interrogation techniques. Nonetheless, the changes related to both emergency and ordinary detainees and now applies to the whole of the UK. This is despite the reservations expressed by the HRC in 1991 concerning this infringement of the right against self-incrimination.



### *Article 15*

The Government makes no mention of the question of early release of prisoners in the context of the cessation of paramilitary violence. Article 15 speaks of the imposition of lighter penalties. At the moment, there is a debate on the question of increased remission for prisoners convicted of paramilitary offences. CAJ has been informed that the authorities aver that there would be considerable difficulties in retrospectively increasing remission for prisoners already convicted. Any guidance which the HRC could give to the Government on this point would be an important contribution to the peace process in Northern Ireland.

A recent report by the Northern Ireland Association for the Care and Resettlement of Offenders found that the release of prisoners is an essential part of the resolution of any conflict. This finding was based on a comparative study of Northern Ireland, Palestine/Israel, South Africa, Italy and Spain.

### *Article 17: Freedom from unlawful interference*

#### *Prisoners' correspondence*

##### **Para 346**

CAJ has received complaints from a prisoner in Full Sutton prison that he was refused permission to correspond with or speak to his family in the Irish language despite the fact that this was the family language. This policy was imposed before Christmas 1994 and lifted in April 1995 without any guidance as to the reasons. He is concerned that this may happen again.

#### *Homosexuality*

##### **Para 358**

Though it is welcome that the age of consent has been reduced to 18, gay people in Northern Ireland are still unfavourably treated in that the heterosexual age of consent is 17 in Northern Ireland. CAJ is also aware of complaints from the gay community of police harassment. It is not clear whether the RUC has undertaken any measures to promote a more understanding attitude to gay people within the police.

### *Article 21: The right of peaceful assembly*

#### *Public order*

##### **Para 386 - 387**

The offence of "aggravated trespass" is one of the new offences in the *Criminal Justice and Public Order Act 1994* which applies to Northern Ireland. This is a significant intrusion into the right of peaceful protest, particularly in relation to the campaign against blood sports. CAJ has been approached by a number of individuals connected with animal rights groups concerned about the implications of this new legislation in relation to their activities. They allege that, while their protests are peaceful though

disruptive of blood sports, they suffer harassment from the police and have been the victims of assaults by the people whose activities they disrupt. They further allege that some police officers are less than enthusiastic in investigating such assaults. They have expressed concern that the new offence will make it difficult for them to continue with their protests.

### *Article 22: Freedom of association*

#### *"Terrorist" organisations*

##### **Para 399 - 400**

Rather than limiting freedom of association, it is criminal behaviour which should be prohibited. Proscription tends to maintain a culture of secrecy and mitigate against the search for more democratic and open politics. Because it is an offence to be a member of a proscribed organisation, it encourages ambiguity and lack of frankness. However, it is also important to point out that the convictions for membership which the Government cited in para 400 are generally the lesser element of a range of charges. The offence, therefore, does not lead to convictions in and of itself. People should be charged, tried and convicted of crimes rather than for membership of an organisation to which they might be drawn because of political belief.

### *Article 24: Children's rights*

#### *UN Convention on the Rights of the Child*

##### **Para 405**

The UK Government was subjected to strong criticism in January 1995 when it appeared in front of the UN Committee on the Rights of the Child (UNCRC). In particular the Committee wondered why there was no mention of the effects of emergency law on children in Northern Ireland. The UNCRC was further concerned at "the absence of effective safeguards to prevent the ill-treatment of children under emergency legislation". The lack of access to basic services for Traveller children, the absence of race relations legislation and inadequacies in the law to prevent discrimination on a range of issues were also among the concerns expressed by the UNCRC in relation to Northern Ireland.

### *Child abuse*

##### **Para 431**

CAJ is concerned that current child protection procedures, while valuable for information exchange, are inflexible and must be adhered to irrespective of the views of the child. A significant number of children withdraw allegations of sexual abuse when professionals still believe it took place. We regard it as a crisis for child care that some children prefer to be raped rather than face the consequences of what happens when they tell. This thorny issue has not been competently and satisfactorily addressed.

### *Article 25: The right to participate in public affairs*

A general point is that information contained in this section of the Government's report focuses on England and Wales except where there is positive information relating to Northern Ireland.

#### *Civil Service*

##### **Paras 444 - 445**

CAJ has been approached by a number of people either working or hoping to work in public sector employment such as social workers or probation officers who have expressed concern about the nature of vetting which may be required. There are no public guidelines about what constitutes satisfactory "criteria with regard to ... reliability". This may be a particular problem for members of the catholic and nationalist community whose political aspirations are to change the constitutional position of Northern Ireland. Does this, of itself, constitute grounds for unreliability?

#### *Ethnic minorities in public life*

##### **Para 446**

None of the 17 Members of Parliament from Northern Ireland are of ethnic minority origin.

##### **Para 447**

Judges in Northern Ireland are chosen from senior barristers. They have to take an oath of allegiance to the Crown. A judicial review has begun challenging this practice on the grounds that barristers of nationalist political opinion will find it repugnant to take such an oath. The oath is apparently of a more stringent nature than that required in other parts of the UK.

##### **Para 449**

This information appears to relate only to England and Wales. In Northern Ireland no members of the judiciary are of ethnic minority origin.

##### **Para 451**

An ethnic minority unit was introduced by the Royal Ulster Constabulary in January 1995 to monitor the incidence of racial harassment. There is no information on the number of police officers of ethnic minority origin in Northern Ireland.

#### *Women in public life*

##### **Para 459**

None of the 17 Northern Irish Members of Parliament are women.

##### **Para 465**

There are no women judges in Northern Ireland at county court level or above. Neither are there any female full-time magistrates.

#### **Para 467**

Research produced in 1993 showed that there were many problems with the way in which the RUC dealt with domestic violence against women. Information concerning the gender breakdown of the RUC would be informative for the HRC.

### *Article 27: The right to freedom of cultural expression*

#### *Non-indigenous minority languages*

#### **Para 484**

The absence of race relations legislation in Northern Ireland has subjected members of such minorities to difficulties. Provision of English-language training has been piecemeal. Ethnic minority people have suffered harassment without being able to seek proper redress. The Government has issued very limited public information in such languages.

#### *Main indigenous minority languages: Irish*

#### **Para 493**

The Government has no coherent policy for the promotion of the language or even dealing with the needs of the Irish speaking community. That community characterises Government response as being to muddle through when pressured. There are no departmental guidelines for promoting any particular policy dealing with the Irish language. The Government have not signed the European Charter for Regional of Minority Languages which recognises the importance of the survival of such languages for European cultural diversity. In particular, the approach by Government to Irish medium education is seen as grudging by the Irish speaking community.

The Irish speaking community has informed CAJ of continuing harassment and difficulty in using the language. It is not illegal to discriminate against people who use the Irish form of their name. Acceptance, for example, of Irish languages checks is a matter of discretion by shops and businesses and Government departments. Though letters to Government departments in Irish will now not be returned, replies are always in English.

#### **Para 494**

The Government refuses to provide any legal protection for the Irish language as it does for the Welsh language in Wales. Nor does it provide the same level of funding as it does to the Gaelic language in Scotland.

The figure of £1.7 million quoted by the Government is deliberately misleading. It includes funding of Irish medium schools within the main education budget and is, therefore, formula funding which would have to be spent for the children's' education anyway. The figure also includes spending on Irish language classes in prison and translation of prisoners letters for censorship purposes. These can hardly be described as promoting the language. There is a grant of £180,000 for an academic project on place names in Northern Ireland. This is also not seen as a promotion of the language.

Estimates of the actual amount spent on the *promotion* of the language include moneys given to the Ultach Trust (see below), the Arts Council, funding for an Irish language newspaper and bursaries for students to visit Irish speaking areas in the Republic of Ireland. Because of the absence of proper disclosure of figures, only estimates can be given for the actual amount spent on promoting the Irish language. However, a figure of £300,000 would be a more accurate reflection of Government commitment to the promotion of the Irish language than the £1.7 million mentioned in para 494.

#### **Para 495**

The Ultach Trust receives an annual budget of £100,000. This is the equivalent of the budget for a 3 teacher school. On this budget, the Trust is expected to cover and fund projects relating to all aspects of the promotion of the Irish language throughout Northern Ireland. This is totally inadequate and represents once again the niggardly approach of the Government. There appears to be no plan to increase funding available to the Ultach Trust.

#### **Para 496**

The Irish speaking community objects to the fact that Irish is merely treated in exactly the same way as other European languages. This appears to contradict the Government's stated position in para 493 that it recognises the contribution of Irish to the community's cultural heritage.

Education through the medium of Irish is seen as axiomatic for the growth of the Irish speaking community. That community feels the Government consequently is reluctant whole-heartedly to support it. The first Irish medium primary school had to wait 13 years for funding. The first Irish language secondary school has been in existence for 4 years and has still not received proper funding arrangements, though the Government agreed to provide £100,000 from other sources recently. An Irish medium primary school in Newry is struggling and may have to close due to total lack of Government support. Two years ago, the Government finally reduced the pupil number viability criteria for urban Irish medium schools to that of rural English language schools. While this was a positive development, rural Irish-medium schools are still required to meet the viability criteria of English-medium schools in rural areas. This unfairly discriminates against these rural schools. Despite these difficulties, the number of primary schools has grown to 8 and the secondary school continues to attract students. Another primary school is planned to open in September 1995 and two more are planned in 1996.

#### **Para 497**

The legislation which will allow the erection of street names in Irish has now become law. In our response to the Government's proposals, we characterised the legislation as minimalist. It appears to remain the case that there must be English street signs while Irish name plates can also be added. This takes no account of the possibility that people living in streets in particular areas may wish to have only the Irish name. It also appears that the English name will remain the legal name of the street. There is no plan by Government to erect street signs (other than name plates at the request of residents) in Irish.

## 5. Case Studies

### Use of Lethal Force:

#### *Case Study 1*

In 1982, my eleven year old son, Stephen McConomy, was killed by a soldier with a plastic bullet in Derry. A Plastic bullet is a solid cylinder that is about three inches long and two inches in diameter. Early that day, some young boys had thrown stones and started a small fire in front of an armoured personnel carrier to show their dislike for its presence in our neighbourhood. If the boys had been a threat to the soldiers, the soldiers could have just left, but they stayed all day. That evening, Stephen was playing with about six other kids near the carrier. An eye-witness said a soldier aimed at and hit the back of Stephen's head from a distance of seventeen feet and produced a three inch hole in his head. The force of the bullet lifted Stephen off the ground and ripped his hands out of his pockets. The soldiers re-loaded the gun and would not let anyone help Stephen for ten minutes. The soldiers were laughing the entire time. The Army claimed that there had been a mini-riot and that they had shot the wrong child. Any riot would have been filmed by cameras that monitor the area but no photos were produced at the inquest. All eyewitnesses said that there was no riot and that Stephen was not agitating the soldiers in any way. In hospital, the police were extremely angry because we took Stephen's clothes. They wanted his clothes so they could wash them and plant something on him.

#### *Case Study 2*

Seamus (Duffy) was fifteen when he was killed by the police with a plastic bullet in 1989 (in Belfast). The police said he was running away after rioting, but he wasn't. Seamus was shot some distance from the riot scene. The police conducted an investigation under the supervision of the Independent Commission for Police Complaints and did not identify the officer responsible. The Director of Public Prosecutions decided against prosecution.

#### *Case Study 3*

On 26 June 1993, I was standing on the street with my four older brothers as the Whiterock Orange Parade passed down the Shankill Road. The police were provoking the young lads by saying, "Come on, come on," and gesturing with their hands. There was a disturbance and the police started shooting rubber (plastic) bullets over our heads. My mother pulled as many people as possible into her home as there was no where else for anyone to run.

### Use of Cruel, Inhumane or Degrading Treatment:

#### *Case Study 4*

I am twenty five years old and live in West Belfast. I am the mother of two young children. My family is known as a Republican family so I have been tortured by the

security forces since I was young. I have been taken to Castlereagh three times and have been severely physically and emotionally abused in detention. One time when I was taken to Castlereagh my mother told my son I had gone away on an aeroplane so he did not know that I had been arrested. He was very upset with me for abandoning him without telling him I was leaving. Another time, my daughter was at home when they came to take me and she had tears in her eyes. They have told me I will be killed by loyalists so I am too scared to go anywhere with my children. When I walk the kids to school the security forces shout graphic sexual abuse at me. One day I was stopped with the kids by a couple of jeeps of police officers. I sent my daughter home because I didn't want her to see the way they treat me. My kids don't want me to leave the house and are constantly checking to see if the police have taken me away again. It has got to the point where my daughter won't go anywhere with me in case I am lifted. It is terrible knowing the my daughter won't ever go shopping with me in the city centre.

*Case Study 5: The following case study is from a community worker in County Tyrone*

A woman was travelling from her home in the South of Ireland with her six month old baby to visit her family in County Fermanagh in June 1994. She was arrested at the checkpoint in the vicinity of her mother's home and brought to Castlereagh. She was told that her baby was going to be put in care. She was in great discomfort while held in Castlereagh because she was unable to breast feed her child. Two days after she was arrested, the police doctor told the officers she would have to be examined before he would allow her detention to be extended. In the meantime, her mother had retrieved the child from the police station. The police told her family that her baby was old enough to be fed by a bottle. The woman was eventually released without charge.

#### *Case Study 6*

My name is Tony Garland, I am from West Belfast and in August 1994 I will have been on remand in Crumlin Road Prison for three years. I am now twenty years old.

On 2 August 1991, a coffee jar bomb was thrown at a British Army patrol near my home. I had just woken up before the blast and heard a knock at the door. When I opened up the door, the bomber pushed past me and ran out my back door. He was shot at while escaping over the back fence. The bomber only came to my door after finding no one home at my neighbour's house. The police came to my house three times that day and I never made any attempt to go into hiding. I would never have stayed in my house if I was at all involved with the bombing. I was arrested that day. No evidence against me was found although the police searched and conducted forensic testing on my house. Two of my friends, Michael Beck and Hugh McLaughlin came to see what was happening to me. The police asked my Mummy their names and they were later arrested. According to the police I was waiting to let the bomber run through my house. I have been charged with attempted murder. The police have not been able to explain why the bomber risked his life by knocking at my neighbour's door if I was waiting for him to escape through my house.

I was brought to Castlereagh and held for seven days. I was interrogated alone about six times a day. I wasn't allowed to see my solicitor for 48 hours and my requests to see a doctor to get an inhaler for my asthma were denied until the sixth day. During the many interrogations, I was hit on the back of the head and throat. The police threatened me and said they were going to arrest and beat members of my family if I didn't confess. I had terrible headaches, nosebleeds, swollen glands and lost over twenty pounds. There are no windows in Castlereagh, the lights are always on, and there was a lot of noise like an alarm. I never knew what day or what time of day it was. The police would ask me the same question every five minutes and I was completely disorientated. On the sixth day, I gave in and signed the confession the police had prepared for me even though I am completely innocent. We were offered a suspended sentence in exchange for pleading guilty in court. We refused the offer because we are completely innocent. If the judge accepts the confession I signed under physical and psychological abuse, I will receive a very long prison sentence.

Crumlin Road Prison was built in 1854 and its conditions are deplorable. There are mice and cockroaches in my cell and one window, but I have to stand on my bed to see out. When anyone comes to visit me they have to wait a long time, and if they bring me parcels they have to wait outside for an even longer period with no shelter from the rain. There is a bell to alert the Screws when I need to go to the toilet, but they won't come, so I have to bang on the door to get their attention. It used to be that I had to put my name on a list to defecate. If my time slot was 3:30 p.m. I might not get in until 6:30 pm and in the mean time I would have to defecate in a brown paper bag or hold it for hours. If I have to defecate after 7:00 pm I have to hold it until the next day. If I am caught defecating in my cell I would be punished with loss of parcels, loss of time out of my cell, or loss of visits for a period of time.

(Tony Garland has since been acquitted having spent over 3 years on remand.)

#### *Case Study 7*

I am sixteen years old and live in Belfast. When I was thirteen, my brother was eleven. The police wanted to arrest my brother after a window in a building site was broken. You would think there had been a bomb scare because of the large number of police who had surrounded him. My neighbour took my brother inside of his house because my Mummy was not present and my brother was too young to be arrested on his own. My neighbour was charged with obstructing justice and my Mummy testified against the officer who led the arrest. The charges were thrown out of court. I am continually harassed by the police and the army because of my Mummy's testimony.

That same year, the same officer was on the corner pointing me out to the Brits (soldiers). I was stopped by the Brits and was made to take my shoes, coat, and socks off in wintertime. It was 7:00 or 8:00 at night and my body was shaking, including my legs, because I was so nervous. As a crowd of people came out and witnessed me being messed about (humiliated) on the street. They searched down my legs, made me pull my T-shirt half way up my chest, and then let me go. I was too scared to leave my house after this. My Mummy complained to the police and the army. The police came to



\* my house and interviewed me. Two weeks later, we received a note from the police saying that the Army didn't make me take my clothes off.

After my Mummy made this complaint, I was stopped and searched by the police and the Brits one-three times per day, about two-four days per week. They are constantly asking me if I am bisexual or gay.

Two years ago, my cousin and I were walking down the street past a stolen car. I was only fourteen years old. The police lifted us and I was separated from my cousin and kept in a cell for five hours. I asked for a solicitor but didn't get one.

Five months ago, officer X arrived in the area as our "community officer". When X first arrived, I was stopped every day about or three times per day. Because of this harassment, I now stay in my house and do not go out at all if I can avoid it. X continually points my Mummy and I out to other police officers and the Army. We are convinced that I will be arrested when I turn seventeen.

A month or two ago, I went to the chip shop and X waited for me to leave the shop. X got nose to nose with me in the archway I have to pass under to get to my house. Each time I moved to go around him, Officer X would move and prevent me from passing. This happened three times before my Mummy started yelling at X. X told my Mummy that he would arrest her. My Mummy finally had to grab me by the arm and move me around X before he would let me pass. Officer X followed us to our house laughing and making comments at us.

In June 1994, I was stopped by another peeler (police officer) on my way home from helping an elderly woman in the neighbourhood. It was about 11:00 at night. A Brit searched me and a peeler came. I gave the peeler my name and the address from the woman's home from which I was coming. I would not tell them the woman's name and the peeler called for a jeep on the radio to arrest me. Before I was taken away, my aunt arrived. She told the officer if they were going to arrest me, she was going along as my appropriate adult. They asked my aunt if she was prepared to walk to and from a local barracks. They said this knowing that no one from my area would be safe walking to this barracks because it is located in an exclusively Protestant area. My aunt said that she would go even though she would have been in a lot of danger. Because of my aunt's knowledge of my rights, the officer let me go. They warned me that they would arrest me next time.

Later in June, I was stopped on the way to a garage by a soldier who called me by name and said, alright, a quick search. I was stopped again two minutes later on my way back from the garage by the same patrol.

I used to be terrified but because I am stopped so often, now I am just annoyed. I wanted to escape to England and live with my family there but my Mummy says the Army and the police will not drive me from my home. My Mummy says I shouldn't have to leave my country.

### *Case Study 8*

I am a ten year old Protestant boy who lives off the Shankill Road in Belfast. Two weeks ago the police arrested my Daddy. The police knew my Mummy was in the hospital. My Daddy told the police that he couldn't leave his three kids alone and an officer told my Daddy, "Fuck your kids." The other two are six and seven years old. The police told our neighbour to watch us and she said that she had kids of her own to watch. Then the officer said "Fuck you and your kids." to our neighbour. I was crying and I saw them throw my Daddy into the landrover. They said they had to take him that night, but they didn't charge him with anything until five weeks later. We were left alone for nearly two hours before my Granny came.

### *Case Study 9*

I am a fourteen year old girl and live in West Belfast. Last year when I was thirteen I was walking with a relative who was seventeen. While we were waiting for someone, police officers, an inspector, and soldiers came up in three jeeps. We started to walk away and the Inspector told us to stop. He asked us if we knew the boys who had been standing near us and told us if we had any drugs to hide we better give it over or we'd be searched. We told him we didn't have anything and he told us "You must have something to do with it, you've got a guilty face."

Although my cousin was five months pregnant and was wearing only a T-shirt and leggings the Inspector told an officer to search us for illegal substances. I didn't even know what illegal substances were and I started laughing a wee bit with the nerves. The police officer said he didn't find anything funny and told us to go down to the jeep. I wouldn't have gone but he scared me the way he was going on.

There were soldiers in front of the jeeps and the policewoman put on rubber gloves. I kept looking at the windscreen where the soldiers were standing. The police officer told me, "Don't worry, the boys aren't allowed to look in." The officer went down our tops and felt under my bra and on my skin. She went through our hair and felt down our arms. Nothing was found and we were allowed to leave.

I was very embarrassed and upset and I was crying. There was a big crowd outside the jeep. My uncle came and asked what had happened. When he complained that her parents should have been informed the police officer shouted, "No wonder she's like that with the example you set." It was very degrading. I still feel really stupid, I thought I had to let her do what she did. We put in a complaint to the police. Eight months later, I received notice that the Independent Commission for Police Complaints was happy with the investigation that the police conducted. I haven't heard anything about the police findings.

## › Collusion:

### *Case Study 10*

My name is Brian Austin, I am in my mid-twenties and I live in Belfast. I am married and I have two young children. My uncle is an elected City Councillor for Sinn Fein, a nationalist party which seeks British withdrawal from Northern Ireland. Since I left my parent's home, I hadn't given my new address to anyone except for close friends and family and the police while applying for a firearm's license for my family's protection. In February 1994, a bomb was left at an address similar to my own by loyalist and the BBC was notified by someone using a recognised code-word that the bomb was left "for Joe Austin's nephew". There is no doubt that the bomb was left for me. I have also received death threats from the police. My four year old son informed me one day that the police even told him, "We're going to shoot your Daddy." I am convinced the police gave my address to loyalist paramilitaries. When a police officer came to my home to notify me of the bomb attack I told him,, "I'm not saying the police are rotten to the core but this is collusion. I wouldn't have believed it before." The Officer replied, "Well, you know yourself, there's rotten apples in every basket." Despite the bomb attack on my home and the fact that I have been informed by the police that I am in danger, I have been denied a firearm license and a grant to improve the security of my home. In response to my application for a home security grant, Mr. X for the Northern Ireland Office told me, "Your death or injury would not cause the state any instability or embarrassment." The Government has left me, my wife, and my young children completely vulnerable to murder.

## **Right to Privacy:**

### *Case Study 11*

I am a sixteen year old girl and live in a small town in County Tyrone. Two years ago, our house was raided and my twelve year old sister fainted and was brought outside the house. My Mummy and Daddy wanted me to check on her but the police wouldn't let me leave. One officer went with me but another told me to come back inside. Four or five soldiers lifted me up and dragged me back inside the house. I struggled to get away for five minutes and was crying. My neighbours were screaming at them to let me go. Later, when I returned inside, soldiers were hitting my brothers, my Daddy had been knocked off of his wheelchair, and the entire family was being verbally abused. I shoved one of the soldiers off of my brother and he slapped and shoved me. We rang a solicitor and an officer made the Brits who were fighting leave and replaced them with other soldiers. The raid lasted seven hours.

Later that year, I was walking into town when a police car pulled up and an officer opened the door. The officer moved the car forward and backwards and wouldn't let me pass. This went on for ten minutes. For years I have been stopped by the police and the army, sexually harassed, and threatened that my day will come.

### *Case Study 12*

The following statement was taken by a community worker in County Tyrone:

In December 1993, the police carried out an early morning raid on my home in County Tyrone. An officer asked me if there were any "T-O-Y-S" wrapped up under the Christmas tree. The officer spelled the word so that my four year old son would not know what was being discussed. I confirmed that the presents under the tree belonged to him. The officer then laughed and opened each present in front of my son thus spoiling his Christmas.

### **Minority Rights: Travellers, Immigrants, Irish:**

#### *Case Study 13*

Ten Traveller families were intimidated from an unofficial site in central Belfast by a self-appointed group and moved several miles to an illegal roadside camp which lacked water, electricity, toilets and other basic amenities. A short time later, a local councillor organised a petition among area residents, gathering over 1000 signatures to urge the local Government to evict the families. Accompanied by two officials from the Department of the Environment and a crowd of forty people, the councillor led a march to the camp, where he told the families about the petition and instructed them to leave the area. As the Travellers had already found two unexploded petrol bombs behind their caravans the previous evening, they moved to another unofficial site later the same day. En route to the third site, one of the caravans broke down, necessitating its temporary abandonment about 200 yards from the new camp. The caravan was set on fire during the night by residents of a nearby housing estate, and when its destruction was reported, no action was taken either by the police or by the Government's Advisory Committee on Travellers.

#### *Case Study 14*

I began to help my parents at the counter of their take-away shop when I was only ten. Because I wanted to respect my parents' wishes and help the family, I continued to help at weekends until I was sixteen, but hated every minute of it. I put up with almost constant racial and sexual abuse and sometimes physical abuse, when young boys would try to climb over the counter. People would throw food at me, accuse me of giving them the wrong change, boys would urinate in the corner of the shop, and I was not able to do anything because I didn't want to give my parents any more worry when they were so busy in the kitchen.

I also had to help interpret for my parents on a regular basis. Our family made regular telephone complaints to the police but they either ignored them or arrived after the people causing the trouble had disappeared. A near by fish and chip shop did not appear to have the same trouble as my parents' business. The windows of the shop and our home upstairs were regularly broken. Our car was vandalised regularly and when it was burnt out one night my father decided not to replace it. I spent my childhood living with a lot of fear and abuse and knew nothing was being done to stop or change my situation.