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Comments on the Northern Ireland (Emergency Provisions) Bill

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THE NORTHERN IRELAND (EMERGENCY PROVISIONS) BILL

Comments from the Committee on the Administration of Justice, (CAJ), Belfast

Introductory remarks

It is profoundly disappointing that the government is planning to extend the life of the Emergency Provisions Act by a further two years, beyond August 1998. This means that it is envisaged that emergency legislation in Northern Ireland will continue to apply until the year 2000. This will be three years after the restoration of the IRA cease-fire and six years after the declaration of the loyalist cease-fire. The renewal of this legislation will be a clear breach of international law. International human rights norms are explicit in relation to emergency measures: once the emergency is over, the recourse to exceptional measures must end. CAJ would argue strongly that the use and abuse of emergency legislation in Northern Ireland has actually exacerbated the conflict rather than helping to resolve it. However, regardless of the merits of that argument, the dramatic reduction in the level of the security threat since 1994 should have resulted in the removal of emergency legislation from the statute books.

The lack of any real movement to repeal emergency legislation sets an entirely inappropriate tone in the context of a peace process. This negative approach is even more disturbing when viewed alongside the incorporation into domestic law of the UK's derogation from the European Convention on Human Rights and the government's decision to refurbish rather than close the detention centres.

It is our view that the powers contained in the Police and Criminal Evidence (NI) Order are more than sufficient to deal with the level of the security threat currently posed in Northern Ireland.

CAJ therefore firmly opposes the renewal of this legislation and our specific comments below should be read in that context.

Part II 1996 Act (Stop and Search Powers)

It is important to remember that emergency legislation has existed in Northern Ireland since the foundation of the state. It has had a corrosive affect on the criminal justice system in general and policing in particular. Short of complete repeal of the legislation, it is particularly regrettable that this Bill has not included any reduction in the stop and search powers of the police and army. CAJ are currently receiving reports of high levels of harassment by both the police and army. This harassment normally takes the form of repeated stopping and questioning under the provisions of the Emergency Provisions Act. Such behaviour not only causes deep resentment but also has the potential to destabilise the peace process. It is important to begin a process of normalisation of policing in Northern Ireland, and a significant strand in this process would be the removal of the extensive powers granted to the police in the EPA.

CAJ therefore recommends that after clause 3 there should be inserted -

3A Part II (Powers of Arrest, Search and Seizure, Etc) shall cease to have effect.

Section 47 1996 Act (Access to legal advice)

We are also particularly concerned that almost two years after the judgement of the European Court of Human Rights in Murray, the proposed legislation does not appear to have taken account of the Court's conclusions. The Murray case concerned a detainee who had his access to a lawyer deferred. The Court held that this, in conjunction with the effective removal of the right to silence, violated the Convention. The power to defer access is contained in section 47 of the Emergency Provisions Act 1996, which will be extended by this Bill. CAJ have viewed with considerable concern the government's inaction in this regard especially in light of recent figures, which indicate an increase in deferrals of access to legal advice. The whole of 1996 saw some 13 deferrals. However, the statistics for the first half of 1997 show an increase, with 19 individuals being refused immediate access to a lawyer. Not only has there been no change in the legislation but it appears that police practice has been unaffected by the Murray judgement. This apparent disregard for the judgement of the European Court on Human Rights sits uneasily with the government's decision to incorporate the Convention of Human Rights into domestic law and its stated commitment to the international protection of human rights.

It is also a matter of concern that provision has not been made to allow lawyers to attend interviews of clients detained in the holding centres. This problem was also commented upon by the United Nations Human Rights Committee. It was also one of the reasons for the recent visit to Northern Ireland by the United Nations Special Rapporteur to investigate allegations of intimidation of defence lawyers by police officers. The presence of lawyers at interrogations under the emergency laws would in all likelihood significantly reduce the level of such complaints.

CAJ therefore recommends the deletion of section 47 after the words "as soon as is practicable" in paragraph 4.

We also recommend that the words "at any time" be inserted after the word "privately" at the end of section 47 (1) of the 1996 Act. In addition a further sub-section should be inserted at the end of the section reading as follows:

If a person makes such a request s/he must be allowed to have his/her solicitor present while s/he is interviewed.

Clause 2

While we welcome the increased flexibility this provision will allow the Attorney General in terms of descheduling particular offences, we believe that jury trial should be restored for all offences. However, in the event that Diplock trials are to be maintained, a more rational approach would the scheduling-in of offences, in other words that no offence is automatically considered as a scheduled one, but if the Attorney General is satisfied that the offence was politically motivated then he/she can order trial without a jury.

Clause 4

The announcement of the introduction of silent video recording into interviews of those detained in the holding centres was made by the previous Secretary of State at the beginning of 1996. Although a draft code of practice has been published, no

video recording yet takes place. CAJ are concerned at what appears to be an inordinate delay in this regard, particularly given that the 1996 Act places a statutory obligation on the Secretary of State to introduce such video recording.

Clause 5

While we welcome the proposal that interviews in the detention centres are in future to be audio-recorded, we are concerned, in the light of what we said at clause 4, that audio recording may not actually begin until the year 2000. Given that the United Nations Committee Against Torture recommended in 1995 that audio recording be extended to all cases, it is a matter of concern that this may not actually happen for another two to three years.

CAJ therefore recommend that after the word "shall" in line 22 of page 2, there should be inserted "within six months of the coming into force of this Act."