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**Comments on the Human Rights Bill and
Northern Ireland**

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THE HUMAN RIGHTS BILL AND NORTHERN IRELAND

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

The government's decision to incorporate the European Convention into domestic legislation is a very welcome step. Many people should, as a result, be able to vindicate their rights more quickly than would otherwise have been the case. Rights will be positively enshrined in United Kingdom law in a way that has never been known before. The way judges think and reason should alter, as should the attention given to human rights by administrators and law enforcers. A new human rights culture should develop. Incorporation of the Convention is however only a first step in this process.

What is needed in Northern Ireland is something much more than the Human Rights Bill is going to deliver. Northern Ireland requires its own tailor-made Bill of Rights that will address the human rights issues which have confronted our society for many years. These issues simply have to be tackled if Northern Ireland is to become a peaceful and just society. All of the political parties in Northern Ireland - except the miniscule Conservative Party - want a Bill of Rights. The present and previous Secretaries of State have said that if this is what the parties want then the UK government will not stand in the way of providing it. None of the parties is likely to be satisfied with the current Human Rights Bill because it is essentially backward-looking rather than forward-looking. It is not going to make sufficient difference to people's lives in this part of the world unless it is supplemented by a more incisive law which comes to grips with the real issues. The White Paper accompanying the Human Rights Bill is deafening in its silence on human rights in Northern Ireland. We can only hope that that is because something designed to deal with Northern Ireland's specific human rights problems is being considered.

The uncomfortable truth is that by incorporating the ECHR into UK law the government is simply making up some ground already covered years ago by most other European nations. Since those countries patriated the Convention, in most cases long ago, they have moved on. Indeed human rights standards themselves have moved on since the ECHR was agreed in Rome in 1950. If the UK really wanted to be at the forefront of human rights protection in the world it should be seeking to give legal force to many other international human rights documents besides the ECHR. These would include the International Covenant on Civil and Political Rights and the Framework Convention on the Rights of Minorities.

There are a number of serious deficiencies in the arrangements proposed by the government. Where appropriate we suggest amendments that could be made to the Bill to remedy these problems. Unfortunately in other respects the scope of the Bill does not allow for the improvements which are necessary.

- As at present in Northern Ireland, only individuals who consider themselves to be actual victims of human rights violations will in future be able to sue. Potential individual victims, or groups of actual or potential victims, will not be able to take legal action.

Lord Lester of Herne Hill has proposed the following amendment which we support. Clause 7, page 4, leave out line 26. Line 30, leave out subsections (3) and (4). Line 41, leave out subsection (6).

- The government is not adding to the rights contained in the ECHR. While the White Paper accompanying the Bill refers to the Protocols the Bill does not ratify any of them. Thus Protocol 4 on the right of free movement within one's country and the right of nationals not to be expelled from their country will not be ratified.

Proposed amendment: Clause 1, page 1, line 9, insert at the end of the line "(c) Articles 1,2,3 and 4 of Protocol Number 4, (d) Articles 1 and 2 of Protocol Number 6, (e) Articles 1,2,3,4 and 5 of Protocol Number 7."

- The Bill does not supplement the civil and political rights in the ECHR with social, economic and cultural rights. Homeless people, pensioners, poor people, sick people, disabled people and people who are unemployed will all gain nothing from this Bill.
- The protection offered by the Convention for victims of discrimination is very weak. A preferable option to Article 14 of the Convention would be Article 26 of the International Covenant on Civil and Political Rights which provides a much stronger level of protection. The Convention also does very little to protect minorities, an issue of particular concern in Northern Ireland. In recognition of the deficiencies in the European Convention in respect of minority rights the Council of Europe has developed the Framework Convention for the Protection of National Minorities. Consideration should be given to giving effect to its provisions in domestic law. Given the title of the Bill we understand that there would be difficulties in proposing amendments to implement either of these proposals but it is crucial that in relation to Northern Ireland some alternative method is found to address this issue.
- The government is currently in breach of the Convention in light of the Murray judgement which found that the combination of adverse inferences being taken from silence and the restrictions on access to legal advice amounted to a breach of the Convention's fair trial provisions. This judgement was delivered in February 1996 and the government's has yet to indicate how it intends to comply with the judgement of the European Court.

- The Human Rights Bill does not address numerous human rights issues which have provoked considerable controversy in Northern Ireland for most of the past 30 years. It will do nothing about the use of plastic bullets in riot or non-riot situations, about religious or political discrimination in the workplace or elsewhere, about non-jury Diplock courts, about the adoption of a criminal procedure which accords fewer rights to persons arrested under anti-terrorism laws than to persons arrested under "ordinary" laws, about the denial of legal aid for the relatives of people whose deaths are investigated at an inquest, about partial policing practices and the police's refusal to allow non-police officers to investigate complaints against the police, about the refusal to appoint a Legal Services Ombudsman, about the discriminatory way in which some prisoners are treated, about the political vetting of community groups, and about any broadcasting ban which might be placed on members of certain political organisations. These problems can in our view best be solved by developing a tailor made Bill of Rights for Northern Ireland.

- The government is not removing its derogation from the ECHR and indeed is incorporating the derogation into domestic law. It is taking this step at a time when there can be absolutely no justification for the derogation given the lack of a sustained campaign of violence amounting to a threat to the life of the nation. International law and in particular the European Convention make clear that once an emergency has ended any derogation must be removed. It is profoundly disappointing that the government is now proposing to give domestic statutory effect to the derogation, a step which of itself would in our view violate the Convention. The government should withdraw its derogation immediately.

Proposed amendment: Clause 14, page 7, lines 33-35, delete "the United Kingdom's derogation from Article 5(3) of the Convention and (b)". Delete lines 39 & 40 and Part 1 of Schedule 2.

- The government has not agreed to incorporate into UK law Article 13 of the ECHR, which guarantees the right to an effective remedy for a breach of the Convention. In this sense the quality of justice in UK courts will remain inferior to that provided in the European Court of Human Rights. If no effective domestic remedy is ensured, many cases will end up in the European Court of Human Rights, just as they do now, simply on the question of there being no remedy available in the UK. The omission of article 13 makes a nonsense of incorporation itself.

Proposed amendment: Clause 1, page 1, line 10, after ("Articles") insert ("13 and").

- If the government wishes to ignore a judge's declaration that an Act of Parliament, or part of it, is incompatible with the ECHR, it will be perfectly at liberty to do so.

Lord Lester of Herne Hill has proposed the following amendment which we support: Clause 10, page 6, line 18, leave out "may" and insert "shall", line 19, at end insert "including such amendments as may be appropriate and necessary to provide an effective remedy for the victim of an unlawful act", line 29, leave out "may" and insert "shall", line 30, at end insert "including such amendments as may be appropriate and necessary to provide an effective remedy for the victim of an unlawful act, line 32, at end insert "For the purposes of this section, a person is a victim only if he or she would be a victim for the purposes of Article 34 of the Convention if proceedings were brought in the European Court of Human Rights in respect of that Act."

- There is not to be a Human Rights Commission for the UK, so no official institution will exist to conduct research and provide education on human rights or to support financially people who wish to bring legal actions in UK courts to vindicate their rights.

Liberty has proposed the following new draft clause which we support

(1) The Secretary of State may by order establish a body to be called the Human Rights Commission which shall have the following duties: -

- (a) to provide assistance, including legal and financial assistance, to persons in enforcing their rights under this Act;
- (b) to initiate and to intervene in proceedings that involve Convention rights issues;
- (c) to examine primary and subordinate legislation, and proposed legislation, for the purpose of ascertaining whether it is, or would be, inconsistent with or contrary to any Convention right;
- (d) to promote public awareness, understanding and acceptance of Convention rights in the United Kingdom;
- (e) to promote good practice within, and provide training to, public bodies in the exercise of their responsibilities in relation to this Act;
- (f) to inquire into any act or practice that may be inconsistent with or contrary to any Convention right;
- (g) to report to the Government and to Parliament as to the action that needs to be taken in order for the United Kingdom to comply with the provisions of the Convention
- (h) to prepare and to publish guidelines for the avoidance of acts or practices which the Commission considers are contrary to any Convention right;
- (i) to do anything incidental or conducive to the performance of any of the preceding functions.

For further information:-

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