



**Submission from the
Committee on the Administration of Justice (CAJ)
to the
United Nations Human Rights Committee
in response to the Sixth Periodic Report submitted by the
government of the United Kingdom
June 2008**

Introduction

The Committee on the Administration of Justice (CAJ) is affiliated to the International Federation of Human Rights (FIDH) and is an independent cross-community human rights non-governmental organisation working to protect and promote human rights in Northern Ireland. The organisation was established in 1981, works across the whole gamut of human rights – civil, political, economic, social and cultural – and has regularly made submissions to all the various UN treaty bodies over the years. The organisation takes no position on the constitutional status of Northern Ireland and is opposed to the use of political violence. CAJ was honoured with the Council of Europe Human Rights Prize in 1998 for our efforts to mainstream human rights and equality into the Northern Ireland peace agreement.

CAJ has made submissions to the UN Human Rights Committee in 1991, 1995, and in 2001 (the last formal examination of the UK). This current submission begins with updates relevant to the “List of Issues” published by the Human Rights Committee on 13 November 2007, which we assume will be the focus of the scrutiny process in Geneva. The remainder of the submission provides commentary on some other aspects of the UK government’s compliance with the ICCPR on an article-by article basis as necessary, adding - where appropriate - to information provided in the Sixth Periodic Report submitted to the Committee by the government.

CAJ’s remit is restricted to Northern Ireland, and other non-governmental organisations will presumably address issues specific to England, Wales or Scotland. However, we should note at the very outset that a key problem with the UK government’s submission is that it frequently either ignores the situation in Northern Ireland, or inaccurately implies that protections or safeguards that exist in one jurisdiction apply throughout the UK.

Indeed, a consistent problem in the UK Periodic Report is that there is no pattern in its reporting across all the distinct jurisdictions. Some of the opening paragraphs under each article of the Convention relate to the whole of the UK, and some relate only to England or some other combination of UK-constituent parts. The entries relating to Northern Ireland are rarely consistent or comprehensive, and there is no obvious logic as to why certain information is provided in relation to Northern Ireland, but other important information is missing. This inconsistency is important because the situation is often entirely different (in legislative and policy terms) in Northern Ireland when compared to Great Britain as a whole, or the other regions of the UK. The scant mention of Northern Ireland is particularly surprising given its experience of conflict, throughout which civil and political rights were seriously abused.

In this context it is also important to note that despite the devolution of power to Northern Ireland, the responsibility for reporting on Northern Ireland to UN treaty bodies remains with the UK government; this has not been handed over to the local administration. This is particularly true of matters relating to criminal justice and policing - of most relevance to this Committee - which have not yet been devolved to the local administration. In light of this, the onus is on the government to carry out consultations with civil society and local government in all UK jurisdictions to ensure that all the necessary jurisdiction-specific information is provided to the Committee. While CAJ is aware that the Ministry of Justice convened a number of meetings with civil society representatives (including some from Northern Ireland) to discuss the UK's current report on the ICCPR, these meetings were held in London, and we are unaware of any more specific or extensive consultation in Northern Ireland.

CAJ believes that there are many good and bad lessons from the Northern Ireland experience that should be informing UK policy generally, and which may be of particular relevance to the Committee's deliberations. We have therefore, where appropriate, sought to provide some additional information and the ***Committee (in line with its own List of Issues, item 3) may wish to urge the government in its formal scrutiny process to more consistently make clear which parts of the report relate to which jurisdiction within the UK, and ask government specifically to draw attention to elements where the law or practice is significantly different in Northern Ireland from other parts of the UK.***

Updates relating to the List of Issues

List of Issues, 1: The incorporation of the European Convention on Human Rights via the Human Rights Act (HRA) was an extremely positive step in the domestic protection of human rights in the UK. While it has its gaps, the Act has been vitally important in the defence and vindication of civil and political rights in particular. The experience of the operation and implementation of the Human Rights Act should assuage any government fears that international human rights treaties are in any way incapable of direct incorporation. Indeed the opportunity now exists to build upon the rights already protected via the HRA by virtue of discussions of a Bill of Rights. While there is a general debate about a British Bill of Rights and Responsibilities, Northern Ireland has undergone a somewhat different process (see submission from the Human Rights Consortium, of which CAJ is a member) as there is a commitment to a specific Bill of Rights for Northern Ireland in our peace agreement. ***CAJ welcomes any influence***

that the Human Rights Committee can bring to bear on the authorities to change their traditional reservations to 'bringing rights home' and in particular in encouraging the government to deliver on a strong and inclusive Bill of Rights for Northern Ireland that incorporates all the rights included in the Convention.

As a specific example of government's reticence in such matters, a decision was made to delay any decision about the right to individual petition to the ICCPR until government had undertaken a review of the operation of its relatively recent decision to subscribe to the Optional Protocol to CEDAW. Most observers saw this as merely a delaying tactic – since the rationale of the operation of one Optional Protocol will offer little relevant experience for the likely operation of other mechanisms. This scepticism may prove well-founded inasmuch as government has recently informed the Working Group of the Human Rights Council responsible for the Universal Periodic Review¹ that only two applications under CEDAW's Optional Protocol had been made, and both were declared inadmissible. It is therefore unclear how helpful this "experiment" has been at clarifying "the advantages and disadvantages of individual petition". It is also unclear what, if any, publicity the government gave to the existence of this mechanism, which could explain the very low levels of application. The formal results of the government's review are expected in summer 2008 apparently. ***The Committee will want to pursue with government if and when it intends to change its stance generally on the domestic incorporation of international human rights commitments and specifically regarding the right to individual petition under the ICCPR.***

List of Issues, 7: CAJ and other non-governmental organisations have been very critical of the Inquiries Act², in that it leaves too much discretion in the hands of the government minister, whose actions and inactions may be in dispute. We definitely do not accept that any inquiry held under the Inquiries Act "will have all the powers necessary to uncover the full facts of what happened". As regards the particular cases after which the Committee inquires:

Pat Finucane:

The family of Pat Finucane, a solicitor killed in 1989 amidst very credible allegations of official collusion, is still awaiting the calling of an inquiry but has expressed a total lack of confidence in any inquiry called under the Inquiries Act. No further progress has thus been made, and as of this date, government has not even sought a meeting with the Finucane family to ascertain how best to proceed. ***We welcome the Committee's pursuit of an explanation from government as to its reasoning that the Finucane Inquiry must be held on the basis of the Inquiries Act, and why it has not involved the family in discussions about what ought to be a common concern to arrive at the truth of the circumstances surrounding this murder.***

Robert Hamill:

The inquiry into the murder of Robert Hamill - a young Catholic man beaten to death in the presence of police - was established in 2004 but has yet to start public hearings.

¹ (para 19, UK national report, A/HRC/WG.6/1/GBR/2)

² As indeed was Judge Cory who recommended the establishment of public inquiries into the cases highlighted by the Committee.

Initial delays were caused by the gathering of evidence and applications for anonymity by the police officers involved. Proceedings have been further stayed by the lodging of an application for judicial review by the family of Robert Hamill challenging the government Minister's refusal to extend the terms of reference of the Inquiry to the decisions of the then Director of Public Prosecutions (DPP)³. This legal challenge has been supported by the Inquiry itself, who share the family's real concerns at the failure of the DPP to secure convictions in this case. It is therefore essential that the government extends the terms of reference of the Inquiry to include the PPS if justice is to be done and be seen to be done.⁴ ***The Committee may wish to ask the government why it refuses to extend the terms of reference to the decisions of the then Director of Public Prosecutions.***

Rosemary Nelson:

The Inquiry into the death of solicitor Rosemary Nelson was also established in 2004 and has just recently commenced public hearings. Again delays were caused in the gathering of evidence. CAJ is monitoring the operation of the Inquiry closely, and has some concerns in relation to the nature and tone of the Inquiry. What should be an inquisitorial process is becoming adversarial, with the legal representatives of the police and government in particular laying defensive questions that are prolonging the proceedings. In addition, the undertone of much of this questioning is attempting to seriously undermine the nature and role of human rights campaigning and implying that it somehow contributed to Rosemary's murder. ***The Committee may wish to ask the government how it will ensure that the interventions of its legal representatives at the Nelson Inquiry do not hinder the progress of the Inquiry.***

Billy Wright:

The Inquiry into the murder in prison of Billy Wright appears in some regards to be the furthest ahead in its work. However, the Inquiry has already had to formally express very grave reservations about the failure of the police to cooperate fully with the Inquiry's work, and has had to record that several hundred files which might have been relevant to their investigation have gone 'missing' from the Prison Service. The Inquiry has encountered a further setback with the dismissal of Counsel to the Inquiry, with no public reasons having been given for this dismissal.⁵ ***The Committee may wish to ask the government what measures it will take to ensure the full co-operation of all those involved in the Inquiry and seek assurances that the Inquiry continues despite recent setbacks.***

List of Issues, 3:

Given the concerns raised above in relation to reporting on Northern Ireland, we are pleased that the Committee has requested further general information from the government. As regards some of the particular queries made by the Committee:

³ Now known as the Public Prosecution Service (PPS)

⁴ The judicial review is due to be heard the week this submission is made, and we may provide the Committee with a brief update on its outcome accordingly.

⁵ Indeed, the Inquiry originally informed the media that Counsel had resigned, which was subsequently corrected in an independent statement by Counsel himself.

Racism in the police:

Though the issue of sectarianism is not the same as racism, it raises many of the same concerns, and often needs to be addressed by way of a range of affirmative action measures. Accordingly, as item 3 implies, it is rather surprising that no reference is made in this section of the report to the particular measures that have had to be taken in Northern Ireland to ensure that the police service is more representative of the two major traditions – Catholics and Protestants. Nor does this issue arise elsewhere in the report. Nor is any reference made to the importance of tracking the retention of minority staff, once recruited. Given the enormous under-representation of Catholics in the police in the past, time-limited legislation currently requires a 50:50 approach to police recruitment in Northern Ireland. However, over a five year period 26 Protestants, 72 Catholics and 1 “not determined” have left the service – i.e. three times as many Catholics (the under-represented group for which the affirmative action measure had been introduced). ***The Committee may want to pursue with government both why it chose not to address issues of sectarianism alongside issues of racism, and what measures government is taking in all UK jurisdictions to monitor the retention of different under-represented constituencies?***

Similarly, the Prison Service in Northern Ireland is very unrepresentative of the community as a whole. The most recent statistics from the Prison Service (its 2006-2007 annual report) indicate that it has 79.8% Protestant and 83.1% male staff, leaving Catholic and female colleagues very under-represented in comparison to the population as a whole, and probably the prison population too. The serious problems of community divisions is well documented, but recent reports carried out by the Northern Ireland Human Rights Commission also highlighted the particular problems facing women in prison. Moreover, Northern Ireland is moving away from a prisoner population that was predominantly in prison for conflict-related activities, and the staff need to adapt to these different challenges. CAJ has explored with the Prison Service what steps are being taken to improve the composition and training of staff, but is unconvinced that sufficient priority is being given to the need for radical change. ***The Committee may want to encourage government to require that the Prison Service in Northern Ireland undertake a formal equality impact assessment of all its staffing policies to better assess the problems faced, and the steps that must be taken to redress the situation.***

Commission on Equality and Human Rights/Northern Ireland Human Rights Commission:

In terms of the Commission for Equality and Human Rights (CEHR), it has no jurisdiction in Northern Ireland, and others will have to comment if the CEHR has the necessary powers for work in England & Wales (and, where appropriate, Scotland). The Northern Irish equivalent of a national human rights institution is the Northern Ireland Human Rights Commission (NIHRC) which is not alluded to in the government's report. Nor was the opportunity taken to explain why government, during the period under examination, sought to undermine rather than strengthen the powers that the NIHRC already held. A review of powers - which was delayed by government by some six years - led to the introduction of procedural requirements and appeal mechanisms limiting the powers to enter places of detention and to compel evidence. The restrictions on the former power in particular have prevented the Commission being designated as a preventative mechanism under OPCAT (see on). ***The Committee may want to explore with the government why it sought to restrict the powers of a NHRI in this way, and what steps it will take to ensure that the NIHRC is able to function independently and effectively.***

List of Issues, 8: With reference to the use of Attenuating Energy Projectiles (AEPs) by the police in Northern Ireland, CAJ refers the Committee to the submission by British Irish Rights Watch, in particular to paragraphs 8.10-8.11 which provide information on AEP use in Northern Ireland in 2005. Echoing the concerns of British Irish Rights Watch, CAJ calls the Committee's attention to the increasing armoury of the police in Northern Ireland which expanded even further with the recent introduction of Tasers. In January 2008, the United Nations Committee Against Torture expressed its concern that Tasers cause "severe pain constituting a form of torture" and in some cases, even death (para 14, Concluding Observations (Portugal), CAT/C/PRT/CO/4), and went on to request the State Party to consider relinquishing the use of tasers. ***Taking into account that the Committee Against Torture has held Tasers in violation of the prohibition on torture and cruel, inhuman and degrading treatment, the Committee may want to express similar concern and ask the government to outlaw the use of Tasers.***

List of Issues, 20: CAJ notes the Human Rights Committee's concern regarding the new system of non-jury trials as contained in the Justice and Security (Northern Ireland) Act 2007. CAJ is opposed to the retention of trials without jury. We believe that the conditions exist, and have existed for a long time, when jury trial should be the norm. Even at the height of violence in Northern Ireland, there was no substantive body of evidence to suggest that there was a serious problem of intimidation. The fact that no further evidence is offered now, and yet non-jury trials are to be retained in a period of relative peace and stability, is of grave concern.

The Justice and Security (Northern Ireland) Act 2007 allows the Director of the Public Prosecution Service to certify cases for a new system of non-jury trials. A close look at the Act reveals the undue discretion placed in the hands of the PPS – Section 1(2)(a) requires the Director only to "suspect" and on the basis of this suspicion conclude that there is a "risk that the administration of justice might be impaired". In fact, the discretion given to the PPS is so wide that CAJ believes that it does not amount to a genuine reform of the Diplock system as the government contends. Moreover, Section 7 of the Act removes the right of legal challenge of decisions⁶ of the Director of the PPS in relation to the certification of cases for non-jury trial. The government had in fact promised that the right to judicial review would be available in its consultation paper on the issue,⁷ and of course the right to legal challenge, particularly judicial review, is a basic right codified in Article 2 of the Covenant. Given the wide and undue discretion being placed in the PPS as highlighted above, it is all the more essential to provide recourse to legal challenge, which the government has failed to do. As noted above, ***we will be interested to see what justification and evidence government provides in response to the Committee's probing questions in this regard.***

⁶ In fact, generally, judicial review of PPS decisions of non-prosecution is tremendously restricted. Perhaps to counteract this, in its first report on the PPS, Criminal Justice Inspection Northern Ireland recommended that clear explanations for decisions not to prosecute or withdraw proceedings should be given to victims (para 11.6, *An Inspection of the Public Prosecution Service for Northern Ireland*, July 2007). Clearly, what is needed is to make the PPS more accountable for its decisions, not provide greater discretion.

⁷ Para 4.12 of the consultation paper stated that "As is the case with all administrative decisions, the DPP's decision will be challengeable by means of judicial review. This will enable defendants to be sure that the decision has been taken properly".

Compliance with the Covenant on Civil and Political Rights

Articles 2(2) and 26 - Non-discrimination

The conflict in Northern Ireland related at least in part to issues of discrimination and inequality, and the peace negotiations of 1998 recognised this fact by mainstreaming important equality tools into legislation and policy measures. The UK government does not merely fail to make mention of the particularities in Northern Ireland, but cites in its report a number of safeguards and measures that explicitly do not apply to Northern Ireland. So, for example:

- **Immigration and nationality (paras 236-239)** – No reference is made to Northern Ireland which, in immigration terms – in contradistinction to all other parts of the UK – has the only land border with another EU jurisdiction, and may therefore have particular issues worthy of comment. Similarly the Agreement gave citizenship rights peculiar to people born in Northern Ireland, but no reference is made to this situation.
- **Race and gender in armed forces (paras 240-243):** There are valuable NI-specific comments that could have been made here regarding police recruitment and retention, diversity problems in the prison service staffing arrangements, and a legal equality duty that applies to all public authorities in Northern Ireland and which is (amongst other things) providing very valuable gender-disaggregated data. None of this is mentioned.
- **Religious discrimination (paras 252 - 255):** Specifically, the Equality Act 2006 applies only in Great Britain but has no parallel in Northern Ireland where the local Executive and Assembly have shown some reluctance to bring together the various anti-discrimination measures into a comprehensive statute to better promote equality for all.

The Committee may therefore wish to ask the government for further information and analysis on inequalities in Northern Ireland and what existing or new measures are being used to address them.

Article 3: Gender equality

Northern Ireland is essentially missing yet again. CEDAW is to examine the UK this year, and material has been submitted to that UN Committee (CAJ's submission is attached herewith for the information of the Human Rights Committee). Suffice it to say here that it is difficult to point to any specific measures taken in Northern Ireland (apart from the important statutory equality duty) which offer any genuine promise of giving effect to the commitment in our peace agreement of 1998 to the "advancement of women in public life". On the contrary, what is evident is the continuing 'invisibility' of women in elected office, in the criminal justice system, and in public life generally. For example, women make up only 32% of government public appointments; only 17% of members of the legislature in Northern Ireland are female; and only 23% of the judiciary

are women. Of this 23%, none are in senior judicial positions.⁸ Moreover, public funding has been cut for women's groups, and to the wider community and voluntary sector that provides many opportunities (paid and unpaid) for women's engagement. ***The Committee may wish to ask the government why the percentage of women in public and political life and senior levels of the legal and criminal justice system is so low, and what measures it will take to address this.***

Article 4: Derogation

CAJ recently published a major report (a summary of which we enclose herewith) entitled "War on Terror: lessons from Northern Ireland". The report notes how invaluable international human rights scrutiny proved throughout the 30+ years of conflict. However, Northern Ireland has experienced 'special' or 'emergency' legislation for nearly 90 years, a blatant contradiction in terms which has withstood international scrutiny.

So it is that the Civil Authorities (Special Powers) Act (Northern Ireland) passed in 1922, was warmly commended by South African apartheid premier Vorster in 1963, and was only replaced by a series of Emergency Provisions Acts in 1973 (amended in 1975, and re-enacted in 1978, 1987, 1991 and 1998). These measures applied to Northern Ireland alone. However, in due course, these emergency powers were added to by a series of measures which applied across the whole UK – the Prevention of Terrorism Acts (passed in 1974, and re-enacted in 1976, 1989, amended by the Criminal Justice and Public Order Act 1994, re-enacted in 1996, amended and maintained in 1998). From 2000 on, Northern Ireland – along with other UK jurisdictions – has seen much of the previous emergency legislation consolidated into one permanent Act, and the Terrorism Act of 2000 has been added to repeatedly since then, all in the name of "national security".

It seems that rather than learning from the problems created for law and order by special or emergency powers, these kinds of powers are now being presented by government to the whole UK – and the wider world – as a necessary response to any security threat (see report paras 118-125 etc).

The UK government, along with others, in signing up to the International Covenant on Civil and Political Rights, accepted that they could only derogate from its provisions in exceptional circumstances. CAJ believes that international human rights scrutiny bodies should require the UK government to justify this constant state of emergency/special legislation and how it can meet the conditions for derogation from the Covenant. In particular, ten years and more into ceasefires by all the major paramilitary groups, CAJ would argue that the international standard of "threat to the life of the nation" is far from met in the Northern Ireland context, yet some "residual" powers are retained (UK report to Universal Periodic Review, para 104).

The Committee may want to ask the UK government to reflect on the almost continuous retention of special/emergency measures since the 1920s in Northern Ireland and ask:

⁸ Source: Submission by the Equality Commission for Northern Ireland to CEDAW, March 2008

- a) *when the government foresees ending all NI-specific anti-terrorist measures;*
- b) *how the government intends to ensure in the future that all such special measures are genuinely time limited;*
- c) *in this context, what problems, if any, does the UK government foresee with the passage of its “permanent” counter-terrorism legislation; and*
- d) *what can international bodies like the Human Rights Committee do to assist States Party to ensure that derogation, and “special” legislation is used only exceptionally, as envisaged in the ICCPR.*

Article 6: Right to Life

Police use of firearms & deaths in police custody (paras 342-347)

Yet again, Northern Ireland is obvious by its absence only. CAJ notes that the government report neglects to comment on the work of the Police Ombudsman of Northern Ireland, which is an extremely important safeguard established to ensure greater confidence in policing.

The Police Ombudsman (OPONI) is a body entirely independent of the police and is responsible for investigating all complaints against the police, including in particular all incidents in which the police draw firearms (the police in NI are routinely armed and are thus in a very different situation to British forces), and any death that takes place at the hand of police officers and/or in police custody. This body has much greater powers than the Independent Police Complaints Commission - the police complaints body which was subsequently created for England and Wales, and which came under a lot of pressure and public criticism in the wake of the death of Jean Charles de Menezes (para 343 of government report, List of Issues item 9), although this criticism was also not mentioned in the government report. The Northern Ireland model of a Police Ombudsman entirely separate from the police, but with police powers to arrest, question and investigate officers suspected of wrong-doing, is one which CAJ would warmly commend to other UK jurisdictions, and further afield. ***The Committee may want to ask the UK government to comment on this model of a totally independent body to handle police complaints, since CAJ believes it may be worth replicating elsewhere.***

Deaths in prison (paras 348 and 349)

The Committee may be interested to know that since the government report was prepared, Brian Coulter, Prisoner Ombudsman for Northern Ireland, decided as a matter of principle to resign (effective from June 2008). It is CAJ's understanding that, since taking up the (newly created) post in May 2005, Mr. Coulter continually sought to increase the independence of the Prisoner Ombudsman, but his attempts proved unsuccessful. Most recently, legislation was introduced to put the post of the Prisoner Ombudsman onto a statutory footing, but it was Mr Coulter's firm belief that the arrangements would still not allow him to be properly independent of the Prison Service. This belief that the government has failed to give him the requisite level of independence from the prison authorities to be able to carry out his work effectively, compelled Mr. Coulter to tender his resignation. ***The Committee may wish to ask the government***

how it intends to make the office of the Ombudsman sufficiently independent of the Prison Service so as to allow any incumbent to carry out the job effectively.

Most importantly as regards the right to life, the Committee may want to ask the government for an update on what is happening with the investigation into the hundreds of deaths which occurred during the conflict in Northern Ireland in which some form of direct or indirect police involvement, or police failure, has been alleged. No reference is made to this issue in the government report. Efforts to vindicate the right to life in this regard have been seriously hampered by a court determination that all cases which occurred before 2000 (i.e. all conflict related deaths) preceded the domestic incorporation of the European Convention and cannot therefore rely on the safeguards established by the Human Rights Act. ***The Committee may want to ask the government how it intends addressing this lacuna and ensuring that its continuing obligations under Article 6 will be met as regards deaths involving state agents during the conflict in Northern Ireland.***

Article 7: Prohibition of Torture & Cruel, Inhuman or Degrading Treatment

The UK government is proud of its role in leading the way internationally in regard to the Optional Protocol of the Convention Against Torture, and was one of the first Member States to ratify OPCAT. However, it seems unwilling at the domestic level to either give the relevant powers to make unannounced visits to places of detention to the statutory national human rights institution for Northern Ireland (the Northern Ireland Human Rights Commission) or to give the Prisoner Ombudsman the level of independence he believes he requires to do his work effectively (as above). ***The Committee may want to pursue with the UK government what mechanism(s) will serve as the domestic preventative mechanism for the application of OPCAT in Northern Ireland, and why government chose not to empower either the NIHRC or Prisoner Ombudsman to this end.***

CAJ reiterates its concern about the introduction of Tasers in Northern Ireland, and ***urges the Committee to support the comments made by the Committee Against Torture to the effect that Tasers constitute a form of torture and encourage their withdrawal from the police armoury.***

Article 9: Liberty and Security of the Person

Legislation against Terrorism

CAJ noted earlier that the UK government seems not to be learning from the mistakes of its counter-terrorist policies in Northern Ireland over the years (see summary of “War on Terror” report enclosed). The experience that we think should be taken on board and applied to the current terrorist threat is summed up as follows:

- Ideally, no special legislation should be introduced, since most terrorist activity is already covered by the criminal law. Murder, attempted murder, and other such crimes are outlawed, so there is no need to create ‘special’ crimes. If society

wants to signal a particular distaste for crimes motivated by terrorist objectives, as we do already in the UK for racist and other hate crime, that can be achieved by recognising that the crimes are aggravated and deserve heavier sentences.

- If it is determined that special legislation is needed, it should be of a time-limited and temporary rather than a permanent nature - it is unclear how “permanent” counter-terrorism legislation can pass the tests of necessity and proportionality required by both international and European human rights standards.
- In particular, the experience of Northern Ireland would argue that measures such as the proscription of organisations *per se* and the criminalising of access to “information likely to be of use to terrorists” have proved ineffective and even counter-productive. In the latter case, for example, the ownership of publicly available political biographies, and the legal monitoring of allegations of police misbehaviour, were drawn into the web of potentially criminal actions.
- Many NGO submissions to the Committee will have raised concerns about the government’s proposals regarding pre-charge detention (List of Issues, item 13). The government failed to secure their initial preferred option of a pre-charge detention period of 96 days, and instead secured parliamentary approval of a move from 7 to 28 days. Government is currently seeking a further extension of 28 days to 42 days, and may – despite much opposition – be successful in this regard. ***It is vital that the Committee comment on this rapidly creeping erosion of the right to liberty.***

The statistics provided in the government report (Table 11) may be used to imply that there are sufficient safeguards to ensure that the innocent are released without charge in due course (approx only 15% of those arrested were eventually charged with terrorist offences). One might just as easily note that 55% of those arrested are released without any charge at all, that many of the charges related to non-terrorist offences, and that many of those non-terrorist charges appear to relate to immigration offences. The authorities do not provide any breakdown of the religious beliefs of those arrested and charged, but one must suspect that those involved are largely Muslim.

In the CAJ report “War on Terror: lessons from Northern Ireland”, we argue that many of the measures taken by government in an attempt to counter “Irish terrorism” were counter-productive in that they only succeeded in targeting many innocent people and in criminalising and even demonising whole communities. We fear very much that the same cycle is underway to counter the current threat, with the same consequences. ***We commend the implicit concern expressed by the Committee about this insidious ‘chill factor’ that starts to develop around certain communities and encourage its further exploration at the examination.***

Even in the Northern Ireland context, the government seems incapable of denying itself access to the extraordinary powers to which it has become used. The Justice and Security (Northern Ireland) Act 2007, in an innocuously titled “Powers” section, in effect replicates the provisions from Part VII of the Terrorism Act which applied specifically to Northern Ireland, and which the government had promised to repeal.⁹ CAJ has always been opposed to emergency legislation and the abuse of powers that they gave rise to, but the case for their retention is even less valid now in a period of normalisation. The Act worryingly bestows powers previously exercised by the police on the army, thereby

⁹ See <http://www.nio.gov.uk/media-detail.htm?newsID=11919> “Secretary of State publishes normalisation plans”

removing the exercise of those powers from the scrutiny of the various new policing oversight mechanisms so recently established. ***We will be interested to learn of the government's response to your questions in this area and would urge that they take greater care in future not to mislead the Committee by claiming (para 404 of their report) to be dismantling all the NI-specific legislation, whilst simultaneously introducing legislation which merely puts those measures on a permanent basis.***

Article 14: Procedural Guarantees in Civil and Criminal Law

Para 526/7 Right of Silence

Referenced in the government's report (paras 113-117), the crux of the Murray v UK case was that the UK government was in violation of its obligations because of the combined failure to (a) ensure the right to silence of the accused and (b) the failure to ensure adequate legal advice to the accused in those circumstances. In other words, if sufficient legal advice was made available to the accused, the government might be justified in arguing that adverse inferences might be drawn from an accused's silence; absent proper legal advice, an accused was well placed to argue that his/her rights to fair trial had been abridged. This "double-lock" has been brought into new relief by a Northern Ireland case (currently being appealed before the House of Lords) about the legal privilege that should/should not apply to consultations between lawyers (and doctors) and accused persons. As a result of the passage of the Regulation of Investigatory Powers Act (RIPA) 2000, the police in Northern Ireland have argued that there is no explicit exemption for legal privilege in the provision for bugging conversations, and as such the police may – subject to certain safeguards - determine to covertly bug conversations between lawyers (and medical personnel) and their clients when in police/prison custody. The domestic courts have accepted that the procedural safeguards need to be stronger than originally was the case, but – by majority – found that article 6 of the European Convention was not breached. The legal complainants, although technically having succeeded in their application, have decided to take the unusual step of appealing, believing that article 6 needs more vigorous judicial protection. It will be their contention, amongst other things, that the Murray case requires that adverse inferences can only be drawn by a suspect's silence if the suspect has access to proper legal advice, and that proper legal advice requires confidentiality. ***The Committee may want to ask the government what steps, if any, they intend to take to ensure that the RIPA legislation conforms fully with the right to due process.***