

Just News

Human Rights in Northern Ireland

UN shines a spotlight on the Inquiries Act

2008 has been a busy year for the UK government at the United Nations. So far this year, it has been reviewed by the Committee on the Elimination of Discrimination Against Women, the Committee on the Rights of the Child and the Human Rights Committee. It has also been given a list of issues by the Committee on Economic, Social and Cultural Rights requesting further information pursuant to their fifth periodic report. This Report will be examined by the Committee in May of next year.

CAJ has always found the international monitoring system to be an extremely important mechanism for exerting pressure on government to comply with its international human rights obligations. In particular, it shines an international spotlight on domestic human rights concerns, and provides a vital opportunity for human rights NGOs to lobby on these issues.

The examination of the government by the UN Human Rights Committee in July this year proved a case in point, as the Committee shared the concern expressed by NGOs on a range of human rights issues. CAJ was present during the examination, and used the opportunity to lobby Committee members on a number of specific Northern Ireland issues, and to clarify or supplement information provided by government.

The Human Rights Committee is responsible for monitoring the implementation of the International Covenant on Civil and Political Rights. The government submitted its sixth periodic report in May 2007, reporting on how it felt it had lived up to its obligations under the Covenant. As is the norm, the Committee then produced a list of issues in November 2007 in which it requested further information from the government in advance of the actual examination in July of this year.

In contrast to the government's report - which was notable for its lack of reference to Northern Ireland - the list of issues and the actual examination by the Committee drew particular attention to a number of topics that have been of

concern to CAJ and other human rights organisations. In general, the Committee asked the government in the list of issues to provide more specific information as regards the human rights situation in Northern Ireland, and this request was repeated during the examination. During the examination itself, a number of particular topics that are of interest to CAJ were scrutinised by the Committee.

The Inquiries Act

In the list of issues the Committee requested the government to explain why the Finucane inquiry had to be conducted within the framework of the Inquiries Act, and whether the Act was compatible with Article 6 of the Covenant (the right to life).

In its written and oral response the government contended that criticism of the Inquiries Act was unjustified; argued that it was "perfectly capable of meeting all international human rights obligations" and that "nothing relevant can be withheld from the inquiry." In relation to the Finucane case in

particular, they argued that the case went to the heart of national security issues and dealt with a large volume of

cont. on page 2

**Committee on the Administration of Justice
Annual General meeting
Monday, 20th October, 2008
at
Clifton House, Clifton Street, Belfast**

12.00noon Business meeting
1.00pm Buffet lunch
2.00pm Panel followed by discussion:

***Human Rights Perspectives on dealing
with the legacy of conflict***

Speakers will include: **Prof. Kieran McEvoy**, QUB; and **Prof. Paddy Hillyard**, QUB

3.30pm Close

Contents

UN shines a spotlight on the Inquiries Act	1
Examination of Ireland by UN Human Rights Committee	3
Bill of Rights Forum - A church perspective	4
Community, Identity and the Bill of Rights?	5
Politicians, Gay Pride and the European Convention on Human Rights	6
Dermott Mc Shane Inquest	7
Civil Liberties Diary	8

contd from front page

sensitive material, disclosure of which would risk lives. They dwelt particularly on the power to issue restriction notices under the Inquiries Act, which they argued would never prevent material being seen by an Inquiry Panel, and which can be challenged in court. They neglected to inform the Committee however, that, this legal challenge would essentially be an ineffective remedy given that notices would most likely be issued on grounds of national security, which would not be examined in detail in the courts. They also failed to mention that the option of recourse by the government to Public Interest Immunity Certificates permitted under the Act would prevent even the Inquiry Panel seeing certain information.

During the actual examination, the Australian member of the Committee - Mr Ivan Shearer - highlighted the limitations in the Inquiries Act. He probed further and asked the government what kind of national security issues would be likely to arise in the Finucane case, and whether the Inquiries Act would prevent material being seen by the family (as opposed to the Panel).

In response the government conceded that restriction notices issued under the Inquiries Act "might" prevent information being disclosed to the family. In defence, they made reference to there being in any case a report at the end of the inquiry. However, they did not mention that the Minister can decide not to publish the report, or to redact any report that is published.

In the concluding observations, the Committee expressed concern that:

"... a considerable time after murders (including of human rights defenders) in Northern Ireland have occurred, several inquiries into these murders have not been established or concluded..."

It further expressed concern that:

"Even where inquiries have been established... instead of being under the control of an independent judge, several of these inquiries are conducted under the Inquiries Act 2005 which allows the government minister who established an inquiry to control important aspects of that inquiry."

The Committee went on to recommend that:

"The State party should conduct, as a matter of particular urgency given the passage of time, independent and impartial inquiries in order to ensure a full, transparent and credible account of the circumstances surrounding violations of the right to life in Northern Ireland."

CAJ will now be pursuing with the government how it intends

to take this recommendation forward, as we approach the 20th anniversary of the death of Pat Finucane.

Non-jury trials

In its list of issues, the Committee had noted the continuing use of non-jury trials in Northern Ireland, and asked the government to explain the difference between Diplock Courts and the new system of certification of non-jury trials by the Director of the Public Prosecution Service; and to justify the distinction between Northern Ireland and the rest of the UK in this respect.

The government argued in its written response that intimidation "remains prevalent" and "is a growing problem" without offering any objective evidence to back these sweeping claims. Even at the height of violence in Northern Ireland, there was no substantive body of evidence to prove that there was a serious problem of intimidation. The government might have been expected to offer more stringent evidence of intimidation in a period of relative peace and stability. Yet, it relied on superficial arguments that Northern Ireland's "small size" and "close knit communities" make it particularly vulnerable to intimidation, with absolutely no measurable data or evidence to support these arguments.

Popular perceptions cannot be the basis for inconsistencies in the criminal justice system and in the end, the Committee did not seem convinced by these arguments, asking for careful monitoring of whether the exigencies of the situation in Northern Ireland continued to justify these distinctions from the rest of the UK, with a view to abolishing them. It also expressed particular concern about the level of discretion placed by the system in the hands of the Prosecution Service, recommending that the government should ensure that:

"for each case that is certified by the Director of Public Prosecutions for Northern Ireland as requiring a non-jury trial, objective and reasonable grounds are provided and that there is a right to challenge these grounds."

Other issues

The Committee expressed concern in relation to a number of other issues particular to Northern Ireland, namely the detention in prison of asylum seekers and the use of the latest form of plastic bullet, Attenuated Energy Projectiles (AEPs). A number of other non-Northern Ireland specific recommendations will have a significant bearing here; in particular, the call for increased representation of women in the judiciary, and the recommendation that the definition of and legislation for anti-social behaviour be reviewed to ensure compliance with the provisions of the Covenant. CAJ will now be following up with government and its relevant agencies on how they intend to give effect to these various recommendations.