

IRELAND

Briefing to the UN Human Rights Committee on Human Rights Concerns

In the context of the UN Human Rights Committee's examination of the second periodic report of Ireland, in July 2000, under the International Covenant on Civil and Political Rights (ICCPR), Amnesty International draws Committee members' attention to some issues which have been of concern to the organization in recent years.

Emergency Legislation (affecting rights under Articles 9 and 14, ICCPR)

In April 1998 the government signed the Multi-Party Agreement as a apogee of political talks in Northern Ireland; the Agreement proposed mechanisms to promote and protect human rights. Amnesty International welcomed the repeated commitments to respect human rights in the Multi-Party Agreement; commitments to consider the incorporation of the European Convention for the Protection of Human Rights and Fundamental Freedoms into domestic law; and a wide-ranging review of the Offences Against the State Act.

In September 1998, in the wake of a bomb-blast in Omagh, Northern Ireland, which resulted in the deaths of 29 people, legislators passed hastily drafted additional emergency provisions. The Offences Against the State (Amendment) Act 1998, which the government itself called "draconian", permits courts in trials of certain offences, including membership of an unlawful organization, to draw adverse inferences from a suspect's exercise of the right to remain silent during police questioning. Given the restrictions on a suspect's rights to legal assistance (see below), the suspect's decision to remain silent may be taken in the absence of legal advice; this has been declared by the European Court of Human Rights to be in contravention of the right to a fair trial (*Murray v UK*, 1996). The new law also extended the period of detention without charge, from 48 hours to 72 hours, for certain offences. It also created new offences including: collection or possession of information likely to be useful to members of illegal organizations; withholding information; and directing an illegal organization. Amnesty International opposed the provisions of the legislation on the grounds that it violates international standards and is inconsistent with the government's commitment in the Multi-Party Agreement to the early removal of emergency powers. Amnesty International believes that curtailing the right to silence impermissibly shifts the burden of proof onto the accused and violates the presumption of innocence and the right not to be compelled to testify against oneself (under Article 14, ICCPR). The provision extending the period of detention before charges are brought, compounded by the lack of access to counsel during questioning, violates the right to assistance of counsel during interrogation (under Article 14, ICCPR) and the right to be informed of charges without delay (under Article 9, ICCPR). The Offences Against the State (Amendment) Act 1998 was due to lapse at the end of June unless it was renewed; Amnesty International is concerned that the government is currently considering renewing this legislation.

2 Briefing to the UN Human Rights Committee

In addition to the above concerns, in October 1999 Amnesty International presented a detailed submission to the Review of the Offences Against the State Act(s) which was set up by the Irish Government as part of its undertakings under the Multi-Party Agreement. In the submission (AI Index: EUR 29/01/99) Amnesty International also recommended:

- * the disestablishment of the Special Criminal Court, because the government has not demonstrated that special courts are essential in the current circumstances and because those courts are also being used for cases not obviously related to offences against the state (Article 14, ICCPR);
- * the repeal of provisions which allow internment without charge or trial (Article 9, ICCPR);
- * the repeal of provisions which allow for detention for extended periods without charge and without access to a solicitor during questioning (Articles 9 and 14, ICCPR);
- * the introduction of legal aid for lawyers to attend police stations and provide legal assistance (Article 14, ICCPR).

Safeguards against ill-treatment of detainees (under Article 7, ICCPR)

Amnesty International continues to receive letters from people detailing their allegations of ill-treatment by gardaí; such ill-treatment contravenes Article 7 of the ICCPR. The organization is concerned that the government has not taken adequate measures to ensure that safeguards are in place to deter police officers from ill-treating people, including provisions against incommunicado detention, for effective legal assistance, and for an effective complaints mechanism.

General Comment 20 of the Human Rights Committee, of April 1992, on Article 7 concerning the prohibition of torture and cruel treatment or punishment, states:

“11. ... It should be noted that keeping under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment is an effective means of preventing cases of torture and ill-treatment. ... Provisions should also be made against incommunicado detention. ... The protection of the detainee also requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members. ...

14. Article 7 should be read in conjunction with article 2, paragraph 3, of the Covenant. In their reports, States parties should indicate how their legal system effectively guarantees the immediate termination of all the acts prohibited by article 7 as well as appropriate redress. The right to lodge complaints against maltreatment prohibited by article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective.”

a) The complaints procedure

Many people alleging ill-treatment state that they have no confidence in the complaints procedure because they do not believe that the existing system is impartial and fair. In particular, Amnesty International is aware of cases in which officers on the investigating team have come from the same police force as the officers against whom a complaint had been lodged. Furthermore, the current procedure, under the Garda Síochána (Complaints) Act 1986, does not give the Garda Síochána Complaints Board sufficient powers for it to be perceived as independent and efficient, as acknowledged by the Complaints Board in its annual report of 1999.

Amnesty International welcomes the recommendation by the European Committee for the Prevention of Torture in 1998 to reform the complaints procedure in order to ensure that the Complaints Board “be seen to be independent and impartial”. The organization believes that public confidence will only be gained if the government introduces an independent system of investigation of complaints against the police.

b) Legal assistance during police custody

An important safeguard against ill-treatment and forced, involuntary confessions is the provision of effective legal assistance to anyone being detained by the police. Amnesty International has been concerned that people detained for criminal matters in Ireland are not entitled to have access to legal counsel during police questioning. In addition, as a result of the fact that there is no provision for legal aid for lawyers to attend police stations, those people who are detained and who have insufficient financial means are often denied legal assistance throughout the time they are held in police custody. During their detention and interrogation, suspects may have to decide whether to exercise their right to silence; and this decision may be used in proceedings against them. The denial of legal assistance in such circumstances would affect the fairness of the proceedings. In general, the denial of legal assistance before and during interrogation is inconsistent with international standards, including Articles 7 and 14 of the ICCPR, which establish the right of detained people to have access to a lawyer during pre-trial detention as well as at trial.

4 *Briefing to the UN Human Rights Committee*

c) Electronic recording of interviews

Amnesty International recommends that audio- and video-recording of police interviews with detainees be introduced forthwith.

The Right to life (under Article 6): Shootings by the security forces

Amnesty International has been concerned about several incidents of killings in disputed circumstances by the security forces, in which the police officers may have used excessive force. John Morris was shot in June 1997 -- from the rear -- in the head and in the lower back during an alleged attempted robbery by him and two others, and he died the following day. He was shot by gardaí from a special police armed unit who, it was initially stated, "due to vigilance" noticed that the occupants of the van were "acting suspiciously" and confronted them. John Morris was a member of the republican paramilitary Irish National Liberation Army. After the incident, the Garda stated that they had shouted a warning and that they opened fire after he pointed his weapon at them. Other people claimed that he offered no armed resistance. The coroner's inquest into his death opened in October 1998 during which the coroner decided that the officers from the special unit would testify anonymously and from behind a screen; and that the family's lawyer would be denied access to the full forensic evidence, including information concerning the identity of the firearm(s) used in the fatal shooting. The coroner's rulings were overturned in October 1999, but the coroner appealed to the Supreme Court. The Supreme Court hearing took place on 21 June 2000; the decision is pending.

Officers from the same special armed police unit, the Garda Emergency Response Unit (ERU), were also involved in the shooting of Rónán MacLochlainn, a dissident republican supporter who opposed the Multi-Party Agreement in Northern Ireland. The ERU is a specially trained, heavily armed, response unit. Rónán MacLochlainn was shot dead in May 1998 in disputed circumstances by officers from the ERU while fleeing from the scene of an attempted armed robbery. Initial police statements reporting that he was killed during a shoot-out were subsequently retracted by police. It would appear that Rónán MacLochlainn and five others had been under police surveillance for some time and that the police unit ambushed them after the attempted robbery.

More recently, John Carthy was shot dead in April 2000 after being barricaded for 24 hours in his home, which was surrounded by 60 police officers; John Carthy was reportedly suffering from depression and many people question whether the force used by the police was excessive in the circumstances.

Amnesty International has been concerned about the investigations into disputed killings because they consist of police officers investigating actions taken by other police officers. Moreover, given the involvement of the ERU in all of the above shootings, the

concern is even greater as to whether the full circumstances of the killings will become known. The attempt, during the inquest into the death of John Morris, to block disclosure of crucial ballistic evidence is an example.

Amnesty International is also concerned that the inquest procedure, as presently constituted, does not satisfy international standards which require a mechanism for public scrutiny of the legality of actions by government agents. The victims' families are severely disadvantaged in their attempts to shed light on the full circumstances of a disputed killing. Lawyers for the victims' families are not provided with full autopsy statements, full forensic evidence and complete witness statements in advance of an inquest beginning - the failure to obtain full disclosure hampers the victim's family from effectively challenging the official version. Yet all of these documents are available to the other interested party to the inquest, the Garda. For example, although John Morris was killed three years ago, the family and its lawyer have to date only received a brief technical cause of death certificate. Furthermore, legal aid is not available to the victim's family in order to pay for legal assistance and independent expert advice, in preparation for an inquest into a disputed death.

International treaties, to which Ireland is a party, require the government to guarantee the right to life, which includes appropriate legislation and regulations on the use of lethal force, as well as mechanisms for impartial, thorough, independent investigation and accountability. Amnesty International believes that the government should establish mechanisms to ensure independent and impartial investigations of disputed killings by law enforcement officers, and that inquests into deaths in custody can provide an effective public scrutiny of the legality of actions taken by officers.

Human Rights Commission

Amnesty International welcomes the enactment of the Human Rights Commission Act on 31 May, enabling the creation of a human rights commission in Ireland. The establishment of such a commission flows out of the government's undertakings in the Multi-Party Agreement 1998. The organization has been in correspondence with the government urging it to establish a commission whose composition, functions and powers would ensure an impartial and effective scrutiny of the human rights aspects of legislation and practice, as well as investigation of patterns of abuse.

6 *Briefing to the UN Human Rights Committee*

Refugees

At present there are three pieces of legislation governing refugees and asylum-seekers in Ireland. The Refugee Act 1996 (implemented in part only), the Immigration Act 1999 and the Illegal Immigrants (Trafficking) Bill 2000 (due to be implemented shortly).

a) Asylum determination procedure

Asylum-seekers in Ireland face a long period of waiting before a decision is made on their asylum applications. Amnesty International continues to press for the implementation of a statutory framework for the asylum determination procedure as the relevant provisions of the Refugee Act have not yet been implemented. In addition, the organization considers that appointees to the Refugee Advisory Board and Refugee Appeals Tribunal should be independent and trained in international refugee and human rights law.

Amnesty International is concerned about the restriction of access to the courts for asylum-seekers. The time limit for an asylum-seeker to initiate judicial review procedures has been reduced from three months to 14 days. This severely restricts access to fair procedures and ultimately access to the courts as the asylum-seeker may not have adequate time to prepare his or her case.

Amnesty International is also concerned that the policy of dispersing asylum-seekers throughout the country may undermine their right to effective access to the refugee status determination procedure. In particular, it may hamper their access to good quality legal advice and representation, which is essential to a fair assessment of their claim.

Although the Illegal Immigrants (Trafficking) Bill 2000 purports to impose sanctions on those who facilitate the entry into Ireland of immigrants without adequate documentation, or with false documentation, this legislation may also target people who are engaged in refugee protection.

b) Detention

Amnesty International is concerned about the detention provisions contained in the asylum and immigration legislation. In particular, the organization is concerned with the lack of safeguards surrounding detention of unsuccessful asylum-seekers; detention may be imposed when it is not necessary and on an arbitrary basis. The organization considers that there should always be judicial supervision of such detention from the earliest possible opportunity and the detained person should be allowed to appeal the decision to detain and should be informed of his or her rights to do so in a language that he or she understands.