



**THE UK'S RESPONSE TO
THE UNITED NATIONS COMMITTEE
AGAINST TORTURE'S,
CONCLUDING OBSERVATIONS
ON THE UK'S FOURTH PERIODIC
REPORT.**

A response from British Irish RIGHTS WATCH

 **SEPTEMBER 2005** 

Introduction

British Irish RIGHTS WATCH is an independent non-governmental organisation that monitors the human rights dimension of the conflict and the peace process in Northern Ireland. Our services are available free of charge to anyone whose human rights have been affected by the conflict, regardless of religious, political or community affiliations, and we take no position on the eventual constitutional outcome of the peace process.

We welcome this opportunity to make a submission to the Joint Committee on Human Rights concerning the UK Government's response to the United Nations Committee Against Torture's, Concluding Observations on the UK's Fourth Periodic Report. We have only commented on the aspects of CAT's recommendations which fall within our remit.

This submission comments upon:

- Use of less lethal force
- RUC and the PSNI
- Human Rights Act
- Police Ombudsman
- Northern Ireland Human Rights Commission
- Use of evidence obtained by torture
- Repeal of emergency laws
- Prisons
- Investigations, inquests and inquiries
- Changes to policy and the "war on terror"

Consultation and transparency

British Irish RIGHTS WATCH would like to draw the Joint Committee's attention to the fact that the Government has yet to publish a response to the CAT Concluding Observations and Recommendations. We are thus unaware of the manner in which the Government is addressing the concerns and recommendations of the Committee against Torture. BIRW is naturally disappointed that the Government has not chosen to share its response publicly.

We are also disappointed that the Government is waiting until mid-October before issuing a response to the eight issues raised by the Committee against Torture; especially considering the deadline for submission to the Committee is 24 November. We do not believe this allows NGOs an adequate response time to the Government's findings.

In its Fourth Periodic Report, the UK government stated: "In preparing this report the Government sought the views of the Forum on the United Kingdom's compliance with this Convention." Membership to the Ministerial/NGO Forum on Human Rights is by invitation only, and the views of non-participating NGOs are excluded from the consultation process.

BIRW, in conjunction with several other NGOs had previously raised the issue of the denial of access to the UK's written response to the Committee against Torture's List of Issues during a meeting in London with UK officials, which affected all of the NGOs making submissions to the Committee. Several of the NGOs met with representatives of government departments on 26th October 2004 to discuss the UK's report to the Committee and the concerns that they would be raising in the NGO submissions. At this meeting, the UK informed us that the UK's written response to the List of Issues could not be provided to us at that time, due to continually changing facts and circumstances that would need to be reflected in the final document. When we arrived in Geneva, some of us were told that at that stage we could not be given a copy of the written response to the List of Issues, because it had been submitted to the Committee and was therefore the "property of the Committee." We were told that it would therefore not be appropriate for the UK to give the document to the NGOs until after the Committee's examination of the UK's report had commenced.

When we relayed this information to individual Committee members, they expressed surprise that the UK's written response to the List of Issues had not been conveyed to us at the same time as it had been given to the Committee itself. They, and we, were of the view that, had the NGOs had access to the written response earlier, this would have been to the benefit of the examination process and the constructive dialogue that the Committee seeks to conduct with the Member State.

Our concern about this denial of access to the written response to the List of Issues was compounded when, on 18th November, the UK stated to the Committee that, "the Committee might wish to give some consideration to

encouraging States Parties to share their responses to the list of issues with members of civil society – as we have done. Where this is not possible, there is a risk that the examination process can lack transparency for members to civil society.” Given that this did not reflect the reality of what happened, this statement was misleading and the transparency of the examination process was indeed jeopardised.

All of the NGOs who made submissions to the Committee acted in an open and transparent manner. Submissions were made available publicly, and in many cases several weeks before the examination took place. We are therefore greatly concerned that our good faith has not been reflected in the actions of the UK government. BIRW hopes that in future examinations of the UK by the various UN human rights bodies, NGOs will be afforded the opportunity to see the written responses of the UK to the Lists of Issues and all other documents submitted to the particular examining body well in advance. In this way, NGOs can more effectively assist the government and the UN in the task of reviewing the implementation of the various international human rights instruments.

Executive Summary

British Irish RIGHTS WATCH believe that while the human rights situation in Northern Ireland has improved in recent years, there remains substantive work to be done. UN Committee against Torture's Concluding Observations and Recommendations on the UK outline some of the issues where attention needs to be focussed. BIRW has chosen to comment on those issues which fall directly under our mandate, both related to Northern Ireland, and to the UK as a whole. Hence, we have examined: the use of less lethal force; the RUC and the PSNI; the Human Rights Act; the work of the Police Ombudsman; the Northern Ireland Human Rights Commission; the use of evidence obtained by torture; the repeal of emergency laws; the state of Northern Ireland's prisons; investigations, inquests and inquiries; and changes to Government policy and the "war on terror".

Less lethal force

The use of less lethal force in Northern Ireland has become particularly pertinent since the CAT report, with communal riots in both July and September 2005. Our key concern is the introduction and use of a new kind of plastic bullet, the AEP. While we are encouraged by the structural and cultural changes which appear to have taken place within the police force regarding the use of plastic bullets we continue to condemn their use. In particular, the very high numbers of AEPs deployed in the four days of rioting in 2005, which was almost the same as the number of plastic bullets deployed in the near-four-year period from 1st January 1999 to 31st October 2002, when an unofficial moratorium on their use came into force.

The Police Service of Northern Ireland, (PSNI) have a wide variety of technology in their arsenal, including CS spray and water cannon. While British Irish RIGHTS WATCH fully acknowledges that the levels of violence within Northern Ireland are higher than those in Great Britain, and the PSNI often face challenging and serious situations, we urge strong caution in the deployment of CS spray and water cannon in crowd control situations.

RUC and the PSNI

The reforms implemented by the Patten Commission have improved the make-up, nature and operation of the PSNI. However, we believe that the PSNI needs to make further improvements in areas such as training, before it can be concluded that the PSNI is a rights-based force. In particular, we raise concern in this submission about the levels and quality of human rights training for officers, which we feel is failing to provide a decent standard of human rights awareness amongst staff. We also raise concern by the culture of protection and impunity which exists for police informers.

Human Rights Act

British Irish RIGHTS WATCH has been particularly concerned by recent Government moves to derogate from the European Convention on Human Rights. We draw the Joint Committee's attention to the Prime Minister's announcements on amending the Human Rights Act. We believe that such changes will have a

serious impact upon the standard of human rights in the United Kingdom. The concept of returning individuals to states where they almost certainly face torture, and/or cruel, degrading and inhumane treatment, serves greatly to undermine the UK's role as an opponent of torture, and a respecter of human rights.

Police Ombudsman

The office of the Police Ombudsman has contributed to the cultural changes within the PSNI, including the development of more open investigations, and attempts to operate as a police force for all of Northern Ireland's communities. While British Irish RIGHTS WATCH views the creation of the office of the Police Ombudsman as a positive development, we are concerned by some elements of her mandate. In particular, the Ombudsman's exclusion from the investigation of the use of potentially lethal force by the army in public order situations, despite the fact that the police have primacy over army operations in such scenarios; this undermines the principle of transparency and accountability. Secondly, the fact that the Police Ombudsman is prevented from investigating the behaviour of retired police officers is of concern, especially since a number of the complaints arise from the 1970s and 1980s, and the police officers involved have now retired.

Northern Ireland Human Rights Commission

The establishment of the Northern Ireland Human Rights Commission was viewed positively by British Irish RIGHTS WATCH. However, we have some ongoing concerns about its operation, and lack of support from the Government. British Irish RIGHTS WATCH draws the Joint Committee's attention to the limited powers of the NIHRC which do not extend to compelling the attendance of witnesses or the production of documents; similarly, we are concerned by the fact that NIHRC has been prevented from visiting places of detention by the Government. The Commission has been further weakened by issues concerning its membership. While these seem now to be resolved, in that the Commission is operating at full capacity, British Irish RIGHTS WATCH has concerns regarding the human rights credentials of certain appointees.

Use of evidence obtained by torture

The admissibility of evidence which may have been elicited under torture is currently under consideration in a case before the House of Lords. British Irish RIGHTS WATCH strongly opposes the use of 'torture evidence' in the court system. We believe this contravenes both domestic and international law, and undermines the prohibition on torture and ill treatment.

Repeal of emergency laws

BIRW has maintained a constant interest in the use of emergency legislation to govern Northern Ireland since its inception. BIRW has never accepted the fact that Northern Ireland needed specific emergency laws. While British Irish RIGHTS WATCH welcomes the enactment of the Normalisation Programme, as set out recently, we remain concerned that the recent upsurge in violence may be used to stall the process. We are also highly concerned that the legislation

proposed by Tony Blair regarding issues of terrorism, detention and courts, will merely replace the emergency laws in the Northern Ireland statute book; ensuring that Northern Ireland is again subject to restrictive legislation.

Prisons

The Northern Ireland prison system, though slowly improving, is still plagued by consistent and essentially preventable problems. In particular, British Irish RIGHTS WATCH is concerned by the disparity of treatment between separated prisoners and the rest of the prison population. We believe that all prisoners should have access to the same rights, for instance, with regard to education. For a number of reasons, including the limitations of the prison estate, and a lack of adequately trained and representative prison staff, the quality of care provided by the Northern Ireland Prison Service for both separated and female prisoners is falling below acceptable standards. British Irish RIGHTS WATCH highlights the need for extensive action on this issue.

Investigations, inquests and inquiries

The impact of several key court decisions, e.g. the McKerr case, combined with the introduction of the Inquiries Act 2005 and the continued failure to reform the Northern Ireland inquest system, has ensured that the Government is consistently failing to be compliant with Article 2 of the European Convention on Human Rights. This failure has meant that in cases such as the deaths of Patrick Finucane, and Billy Wright, both the families of the deceased and the wider public have yet to find justice. British Irish RIGHTS WATCH believe that real and immediate changes need to be made to both the Inquiries Act, and to the wider system of investigating deaths.

Changes to policy and the 'war on terror'

The death of Jean-Charles de Menezes in July 2005 has highlighted the need for a public review of the policies employed by the Government, especially the use of a 'shoot to kill' policy for suspected suicide bombers. British Irish RIGHTS WATCH believe that curtailing civil liberties, and human rights, in the name of the 'war on terror' is both illegitimate and counter-productive. We encourage the Joint Committee to make a robust examination of Government policy on this issue.

USE OF LESS LETHAL FORCE

CAT Conclusions and Recommendations

"B. Positive aspects

3. (a) the confirmation that no baton rounds have been fired by either the police nor the army in Northern Ireland since September 2002."

British Irish RIGHTS WATCH has welcomed the fact that no plastic bullets were fired between September 2002 and July 2005. We feel this demonstrates that the challenges of public disorder in Northern Ireland can be successfully met without recourse to plastic bullets. We were therefore particularly disappointed by several recent developments in the use of less lethal force in Northern Ireland.

- **Introduction of Attenuating Energy Projectiles (AEPs) in June 2005**
- **Use of AEPs in July 2005**
- **Use of AEPs and live rounds in September 2005**
- **Children/young people and AEPs**
- **Use of water cannon**
- **Use of CS incapacitant spray**
- **Use of tasers**

Introduction of Attenuating Energy Projectiles (AEPs) in June 2005

While British Irish RIGHTS WATCH was encouraged that the CAT Recommendations and Conclusions (1998) called for the withdrawal of plastic bullets, we remain consistently frustrated by the Government's failure to outlaw their use.¹ Since 1972, plastic bullets have resulted in 17 fatalities and many hundreds of injuries.² In 1999, the Patten Commission recommended that "an immediate and substantial investment be made in a research programme to find an acceptable, effective and less potentially lethal alternative to the PBR [plastic baton round]."³ The result of this research however, has been the formal introduction of the Attenuating Energy Projectile (AEP) which is essentially a soft-nosed plastic bullet. In our submission to the UN Committee against Torture (2004), we raised our concerns about the AEP, which we believe has a similar capacity to the plastic bullet (LA21A1) for causing injury or death. The Oversight Commissioner for Northern Ireland has stated: "the AEP remains a projectile

¹ Recommendations, point (d). *Conclusions and Recommendations of the Committee against Torture. United Kingdom of Great Britain and Northern Ireland and Dependent Territories.* November 1998.

² In addition, in August 2004, Dominic Marron died, 23 years after having been struck in the head by a plastic bullet. His family believes that his death was a direct result of the injuries he sustained from the plastic bullet. *Plastic Bullets claims another life.* Press Release. 23.08.04. Relatives for Justice.

³ *A New Beginning: Policing in Northern Ireland.* The Report of the Independent Commission on Policing for Northern Ireland, September 1999, (hereafter, Patten report) para. 9.15

weapon, albeit safer, and is a replacement [of the plastic bullet] not an alternative.”⁴ The use of the AEP is incompatible with Patten’s recommendations for finding a less lethal alternative to the plastic bullet.

A DSAC Sub-Committee, part of the Ministry for Defence, investigating the injury potential of the AEP stated: “The risk of impact to vulnerable areas such as the head and the chest will not exceed the already low risk of such impacts from the L21A1.”⁵ It went on to say: “The clinical impact of the reduction in damage to the brain and overlying skull cannot be assessed confidently because of limitations in current models for this type of impact.”⁶ The absence of data on this aspect of the AEP is of concern to BIRW. We are also concerned that while the AEP may minimise the risk of head injuries, it is still a potentially lethal weapon, and has a greater potential to lodge in the wound than an L21A1.

We would like to draw the Joint Committee’s attention to the official guidelines on the deployment of AEPs, which state that the minimum distance for the use of AEP to target is one metre.⁷ We believe that this change in the guidelines, (the firing of plastic bullets required a distance of at least 20m) has very serious implications for the right to life in Northern Ireland; because the potential for causing serious injuries or death is increased by firing at such a short range.

All cases of AEP/plastic bullet use are automatically referred to the Police Ombudsman of Northern Ireland for investigation.⁸ In all cases the Police Ombudsman has found their use to be fair and proportional. Although the Police Ombudsman has on occasion made recommendations for better police practice, she has found every single firing that she has examined to have been lawful, proportionate, and justified. This smacks of rubber-stamping.

The solicitors’ firm, Kevin R Winters & Co, reported injuries suffered by their clients from being hit by plastic bullets on 13th June 2001, 14th June 2002, 28th August 2002, and 29th August 2002. The firm has also reported serious injuries suffered on other dates, such as a youth worker who was trying to keep the peace, whose right upper arm was fractured in three places by a plastic bullet on 14th May 2002. The victim needed an operation to insert plates and screws and has suffered post-operative radial nerve palsy and dropped wrist.⁹ Since the Police Ombudsman has not reported on these incidents, it can only be assumed that the plastic bullets were fired by soldiers, over whom she has no jurisdiction. BIRW is concerned that an objective and independent investigation into each case of

⁴ *Office of the Oversight Commissioner, Report 11*. September 2004. p. 52

⁵ *Statement on the Comparative Injury Potential of the Attenuating Energy Projectile (AEP) L60A1 and the L21A1 Baton Round*. para. 16. DSAC Sub Committee on the medical implications of less - lethal weapons (DOMILL).

⁶ *Ibid.* para. 22.

⁷ *Notes for guidance on Police use of Attenuating Energy Projectile*. Amended. 16.05.05 www.acpo.police.uk

⁸ Henceforth known as Police Ombudsman.

⁹ Paraphrased from *Plastic Bullets*. British Irish RIGHTS WATCH. September 2005. See Appendix.

AEP/plastic bullet use is not being achieved. We are also disappointed that the Police Ombudsman considers AEPs to be a less lethal option than plastic bullets.¹⁰ We are concerned that her statement on this issue has impinged upon her ability to carry out fair and impartial investigations into their usage.

British Irish RIGHTS WATCH ask the Joint Committee to seek assurances that the Police Ombudsman's statements on AEPs have not and will not prejudice her investigations into their usage.

We are also concerned by the fact that some of the AEPs/plastic bullets deployed in Northern Ireland were fired by the army; indeed the majority of AEPs deployed in September 2005 were by the army. The nature of the Police Ombudsman's remit prevents her from investigating such usage. While the army does have an investigatory body, relatively limited critical analysis is applied to the deployment of AEPs and such findings are not made public. The Independent Assessor of Military Complaints Procedures was charged with investigating a series of plastic bullet deployments from 2001-2002. His recommendations did point towards a need for accountability and scrutiny. For instance, he advocated that: "experienced evidence-gathering teams from the RMP [Royal Military Police] using video cameras should be used when rioting is anticipated."¹¹ However, BIRW do not believe that these recommendations go far enough. The army itself has chosen not to incorporate the Independent Assessor's recommendations into their guidelines for the firing of plastic bullets.¹² The role of the army in Northern Ireland is to support the police and the police have primacy over operations. It is thus of grave concern that AEPs can be deployed by the army without any structure for independent investigation. There is a danger that because of this omission, moves made by the Police Service of Northern Ireland (PSNI) towards human rights compliance will be undermined.

Within the PSNI itself, the role of the Police Ombudsman in investigating AEP/plastic bullet usage appears to be acting as a deterrent. The Chairman of the Police Federation of Northern Ireland suggests "... a side-effect of the post-incident scrutiny of the Police Ombudsman's Office is an unwillingness among many rank and file officers to be a trained baton gun user."¹³ BIRW views this as encouraging; but the general attitude expressed within the article is very supportive of the continued deployment of AEPs and we feel that this is of concern. We are however encouraged by the attitude exhibited by police officers on the ground in July 2005 – where the adherence to a strict chain of

¹⁰ *Annual Report and Statement of Accounts, April 2004 to March 2005.* Office of the Police Ombudsman. p. 14
<http://www.policeombudsman.org/publicationsuploads/Annual%20Report%2004-5.pdf>

¹¹ Paraphrased from *Plastic Bullets*. British Irish RIGHTS WATCH. September 2005. See Appendix.

¹² See *Ibid*.

¹³ *Intent on Injuring Police - PoliceBeat Editorial, August 2005.* Police Federation of Northern Ireland. <http://www.policefed-ni.org.uk/aug05.htm>

command would appear to have militated against hasty or over-reactive use of AEPs.¹⁴

British Irish RIGHTS WATCH draws the Committee's attention to the relative absence of public consultation regarding the introduction of the AEP. Approval for the introduction of AEPs was granted on 7 April 2005 and they were made available to firearms officers in England, Wales and Northern Ireland on June 21 2005.¹⁵ As far as BIRW can ascertain from Policing Board documents, there does not seem to have been a widespread or in-depth review process. BIRW did make a submission to the Board but an opportunity to do so was only presented after consistent campaigning by concerned human rights groups. We feel that a decision such as this should have been opened to wider public consultation.

Controversy surrounded the introduction of AEPs. A number of human rights groups took the view that the Chief Constable could not purchase AEPs without consulting the Policing Board, because they could be considered as novel and/or contentious items. However, after taking legal advice, the Policing Board seems to have concluded that the Chief Constable was only under a duty to notify them of any such expenditure, and they do not have the power to approve or disapprove his decision to deploy AEPs, or, presumably, any other weapon. If this is true, then it is a matter of grave concern, given the important role played by the Policing Board in ensuring that the PSNI complies with human rights standards¹⁶.

BIRW ask the Joint Committee to encourage the Government to carry out a full review relating to the addition of AEPs to the PSNI's arsenal.

British Irish RIGHTS WATCH would like to raise concern about standards applied to AEP/plastic bullet usage in Northern Ireland. The Policing Minister for the UK, Caroline Flint, stated when AEPs were introduced that the "AEP will be used only in accordance with guidance which is intended to provide authorised firers with a less lethal option in situations where they are faced with individual aggressors whether such aggressors are acting on their own or as part of a group. It is not a crowd control technology; it is designed to be used against specific individuals in a variety of scenarios."¹⁷ Indeed plastic bullet usage elsewhere in the UK has been solely against individuals. In her annual report, the Police Ombudsman argues for the deployment of AEP/plastic bullet in cases where individuals

¹⁴ A police officer is quoted as saying: 'Myself and my colleagues are more fearful of senior officer's decisions than the rioters themselves. *'PSNI officers 'will die' in Street Riots.* Newsletter. 29.07.05.

¹⁵ *Ministers back 'less lethal plastic bullet'*. Ulster Television. 04.04.05

¹⁶ According to the Policing Board's website, one of its key functions is "securing, promoting and supporting professional, human rights and ethical standards within the police service – <http://www.nipolicingboard.org.uk>

¹⁷ *House of Commons Hansard Written Ministerial Statements 04.04.05.*
<http://www.parliament.the-stationery-office.co.uk/pa/cm200405/cmhansrd/cm050404/wmstext/50404m04.htm>.

cannot be contained by CS spray, and where, in Northern Ireland, there would otherwise be recourse to lethal force.¹⁸

In Northern Ireland, AEPs and their predecessor plastic bullets have consistently been used as a method of crowd control and, indeed, the guidelines and policy on their use in Northern Ireland clearly state that they can be used to restore public order, (in other words, crowd control).¹⁹ BIRW is concerned about the apparent double standards which exist regarding less lethal force and crowd control, and the disparity in practice between Scotland, England and Wales, and Northern Ireland. The Committee against Torture clearly states that AEPs/plastic bullets should not be considered a method of crowd control. Their use for crowd control indicates a disregard for human rights in Northern Ireland.

British Irish RIGHTS WATCH does not consider AEPs to be a less lethal alternative to plastic bullets. British Irish RIGHTS WATCH urges the Joint Committee to ask the Government to ban AEPs, in line with the 1998 CAT recommendations.

Use of AEPs in July 2005

We know that public disorder situations in Northern Ireland can be controlled without resort to AEPs/plastic bullets. We have seen this in the approach taken by the Commander of the Derry police force, whose force has not used plastic bullets/AEPs for the last seven and a half years.²⁰ We have also seen this during the Ardoyne parade and riots of July 2004. On this latter occasion, the PSNI and army used alternative methods of containing the crowds of rioters. A report issued by the Human Rights Advisors to the Policing Board on the events in the Ardoyne (2004) concluded that proportional force had been used.²¹

British Irish RIGHTS WATCH was disappointed to see the deployment of AEPs in a public disorder context, just three weeks after their introduction into Northern Ireland. On 12 July 2005 severe rioting broke out on the return journey of the Orange Order Parade, in the Ardoyne shops area. Between 80 and 100 police officers, eight members of the public, two ambulance staff and two journalists were injured; nine blast bombs and a number of petrol bombs were thrown at police.²² The police fired 22 AEP rounds. A PSNI statement indicated that

¹⁸ *Annual Report and Statement of Accounts, April 2004-March 2005*. Police Ombudsman for Northern Ireland. P. 14.
<http://www.policeombudsman.org/publicationsuploads/Annual%20Report%202004-5.pdf>

¹⁹ *Notes for guidance on Police use of Attenuating Energy Projectile*. Amended. 16.05.05 www.acpo.police.uk

²⁰ *Non-use of plastic bullets praised*. Irish News. 26.07.05

²¹ *A report on the policing of the Ardoyne Parades, 12 July 2004*. Northern Ireland Policing Board. 04.11.04.

http://www.nipolicingboard.org.uk/word_docs/PDFs/ardoyne_parades.pdf

²² Reports indicate that the bombs were the work of the Continuity IRA (a dissident republican faction). Gerry Adams, Sinn Fein leader, claimed that the police

deployment had been justified after “police came under sustained attack for a number of hours from a crowd throwing missiles.”²³ Four men have been charged with riotous assembly. On 4 August AEPs were deployed against rioters on the Crumlin Road in North Belfast, following police arrests of loyalists. 11 AEP rounds were fired by the police.

British Irish RIGHTS WATCH welcomes the investigation by the Police Ombudsman's Office into the discharge of the AEPs on 12 July. Media reports indicate that permission to use the rounds was denied eight times before finally being granted.²⁴ BIRW is encouraged by the restraint used by the officers, and the relatively limited number of rounds used.²⁵ This would imply that due care and consideration is being applied during such situations. We are concerned, however, by media reports that Chief Constable Sir Hugh Orde, head of the PSNI, is to review regulations on the discharge of plastic bullets. It has been indicated that such changes would focus on increased deployment.²⁶

Use of AEPs and live fire in September 2005

The outbreak of serious rioting on 10, 11, 12, and 13 September in Belfast, following the re-routing of the Whiterock Orange Order parade, saw the discharge of over 500 AEP rounds, and live fire by both the army and the PSNI.²⁷ We would like to draw attention to the huge number of AEP rounds fired during the riots. On the 10 September alone, security forces fired about 450 rounds, in contrast to relatively limited numbers on the subsequent days.²⁸ While we recognise the security forces faced a serious and dangerous situation, we are concerned that the firing of such large numbers of AEPs may not have been proportionate. Research by British Irish RIGHTS WATCH has found: “... almost as many AEPs (519) were fired in four days in 2005 than plastic bullets (569) were fired in the almost four year period from 1st January 1999 to 31st October 2002.”²⁹

moved into the area in a 'reckless manner, they took control away from the stewards'. Alex Attwood, SDLP Policing spokesperson claimed 'at least two of the most senior members of the UVF were among supporters who preceded the Orange Lodges pass Ardoyne Shops on Tuesday night..... Their presence was planned and it was provocative.' *Ardoyne faces the fallout*. 13.07.05. Daily Ireland. And, *Alex Attwood statement*, 13.07.05.

<http://www.sdlp.ie/prattwooduvfpassedshops.shtm>

²³ *Missiles included blast and petrol bombs*. PSNI statement. 12.07.05.

www.psni.police.uk

²⁴ *Police 'made eight requests to use plastic bullets'*. Ulster Television. 14.07.05.

²⁵ For example during the 1996 standoff at Drumcree, 6002 plastic bullets were discharged over a seven day period (average of 857 per day). *The Misrule of Law: A report on the policing of events during the summer of 1996 in Northern Ireland*. Committee on the Administration of Justice, Belfast, 1996, p. 27.

²⁶ *Twelfth riots prompt plastic bullet review*. Sunday Life. 04.09.05

²⁷ *Leaders must 'back forces of law'* BBC News. 12.09.05

²⁸ *Whiterock disturbances*. Press Release. www.psni.police.uk. 10.09.05

²⁹ *Plastic Bullets*. British Irish RIGHTS WATCH. September 2005. See Appendix

We are also concerned that the reporting and scrutiny structures for the discharge of AEPs will be unable to discern accurately whether each use was justified (as per the Police Ombudsman's mandate) due to the sheer volume of rounds fired. We recognise that the security forces were facing scenes of violence, not seen for nearly a decade, and we commend the PSNI for their calm response to a difficult security situation. However, the potentially excessive use of AEPs continues to cause BIRW concern.

We are also highly concerned by the use of live fire in the riots (by rioters, the PSNI and the army). Two civilians were injured by live fire.³⁰ One of them received serious injuries to the arm from a bullet fired by a soldier.³¹ Rioters fired 115 shots at police and set off 146 blast bombs.³² The PSNI are to be commended for firing only eight live rounds in return. However we hope that the Police Ombudsman will nonetheless carry out a full and thorough investigation into the use of live ammunition.

We hope that the Joint Committee will encourage the Government to view the use of live ammunition against its citizens with extreme caution.

Children/young people and AEPs³³

Though the investigation into the deployment of AEPs on 12 July is ongoing, it appears that one child and one young person were injured by AEPs.³⁴ The mother of the 15 year old child claims: "He wasn't even rioting. He wasn't even facing the police. He was hit on the back of the leg. He hurt his knee as he hit the ground. He was very pale, shaken and confused."³⁵ It is of serious concern

³⁰ Whiterock disturbances and Further disturbances. Press Releases. www.psni.police.uk. 10.09.05 and 12.09.05

³¹ Ex-Lord Mayor 'will testify in riot case'. Newsletter. 22.09.05

³² Revealed – the horrific tally from loyalist riots. Belfast Telegraph. 14.09.05

³³ For the purposes of clarity, a child refers to anyone under 18 years of age, and a young person from the age of 18 to 25. *The Commissioner for Children and Young People (Northern Ireland) Order 2003, Article 3*, uses the following definition:

(1) In this Order "child or young person" means

(a) a person under the age of 18; and

(b) a person aged 18 or over who is leaving care;

(c) a person under 21 who is a disabled person within the meaning of the Disability Discrimination Act 1995 (c.50).

Correspondence with the Northern Ireland Commissioner for Children and Young People's office. 20.09.05

³⁴ A 22 year old and a 15 year old were both hit and injured by AEPs. According to, *Two arrested on riot charges*. Daily Ireland. In *Ardoyne faces the fallout and Same old story*, Daily Ireland reports two teenagers were injured. Daily Ireland. The Irish News also acknowledges the boy's injury, in *Sinn Fein's script goes awry as rioting flares*. Irish News. 14.07.05.

³⁵ *Two arrested on riot charges*. Daily Ireland.

that the force of an AEP is substantial enough to knock a 15-year-old to the ground.

Research into the use of plastic bullets between 1970 and 1999 showed that a disproportionate number of children and young people were killed by such projectiles; often these young people were innocent bystanders, and not participating in the violence.³⁶ The problems of aiming plastic bullets at a crowd, the relatively short distance between the police and target, and the presence of children and young people at riots have meant that children and young people are more likely to be injured or killed by this method of crowd control.³⁷ BIRW is interested to note that the introduction of AEPs was subject to consultation with the Children's Commissioner. In the submission made by the Northern Ireland Commissioner for Children and Young People to the UN Secretary General's Study on Violence against Children, the Commissioner indicated that a full child impact assessment has not been carried out on AEPs.³⁸ We draw the Joint Committee's attention to reports submitted to the UN Committee on the Rights of the Child by the Children's Law Centre and Save the Children UK, which argued that the AEP fell below domestic and international child-rights standards as contained in Articles 3 (best interests of the child), Article 6 (right to life) and Article 19 (protection from violence) of the UN Convention on the Rights of the Child.³⁹

British Irish RIGHTS WATCH would like to know if a child impact assessment has been completed; and, if it has, the results of the assessment.

The ACPO guidelines relating to children and projectile weapons state:

“Whilst the discharge of an AEP represents an option which is potentially a less lethal alternative to conventional firearms every effort should be made to ensure that children are not placed at risk by the firing of an AEP. This is particularly relevant in public order situations where children may be

³⁶ Nine of the seventeen victims were aged under 18, with the youngest being 10 years old. Only five of the victims were aged over 21.

³⁷ Such dangers are not limited to children. There have been as yet unsubstantiated allegations of a woman shot in the stomach by a plastic bullet, after a bullet ricocheted into her while she was standing at her front door, during the riots in September 2005. *“If I was a few years younger, I'd be rioting”*. Sunday Tribune. 18.09.05. There have also been allegations of individuals losing eyes from AEPs and a 15 year old who lost his testicles after being hit by an AEP. *“If I was a few years younger, I'd be rioting”*. Sunday Tribune. 18.09.05

³⁸ *Submission to the United Nations Secretary General's Study on Violence against Children*. Northern Ireland Commissioner for Children and Young People. (NICCY). March 2005. www.niccy.org

³⁹ Cited in *Bradford Non-Lethal Weapons Research Project (BNLWRP)*. Research Report No. 7. May 2005. Centre for Conflict Resolution, Dept. of Peace Studies. http://www.brad.ac.uk/acad/nlw/research_reports/docs/BNLWRPResearchReportNo7_May05.pdf

amongst a crowd and be placed in danger should an AEP miss its intended target.”⁴⁰

Those rioting on 12 July were predominantly children and young people. Journalist Anne Cadwallader claimed: “there was hardly a rioter from Ardoyne over the age of 16. I stood there for two hours watching them. They were all kids. Recreational rioters, motivated more by the six-pack than the six counties.”⁴¹ This is supported by the ages of some of those charged with riotous assembly following the events in the Ardoyne – they included a boy of 12 and another aged 17.⁴² Gerry Adams, attempting to mediate, also acknowledged the presence of children at the riot.⁴³ Fr Aidan Troy claimed that there were children as young as 11 years old at the riot.⁴⁴ Indeed, reports of a Belfast riot on 22 August 2005 indicated the presence of six-year-old children.⁴⁵

British Irish RIGHTS WATCH is very concerned by the use of AEPs against children and young people, and by the fact that relevant AEP guidelines are clearly being ignored.

British Irish RIGHTS WATCH is alarmed at media reports that the police may use “public order tactics” against children. The North Belfast Chief Superintendent stated: “Police do not want to be put in the position where we have to use public order tactics against children but in the face of continuing violence we are being left with very little choice.”⁴⁶ We take this to include AEPs, water cannon, and use of riot police, with or without army support.⁴⁷ While we are mindful of the need to control violence by young people in Northern Ireland, we believe such tactics are irresponsible, and can result in the infliction of serious injury and even death.

⁴⁰ Notes for guidance on Police use of Attenuating Energy Projectile. Amended. 16.05.05. para. 7.8 www.acpo.police.uk

⁴¹ *Respect and equality the solution to Ardoyne*. Daily Ireland. 14.07.05.

⁴² *Boy, 12, charged over Ardoyne rioting*. Ulster Television. 17.08.05.

⁴³ ‘Myself and Fr Aidan Troy were in the area to try and defuse the situation with the young people. We tried to get close to the young people ...’ *Same old story*. Daily Ireland. The Irish News story, *Sinn Fein’s script goes awry as rioting flares* also stated ‘gangs of teens took part in the ritual rioting’ and ‘dozens of teenage girls take to their high heels every two minutes...’. Irish News. 14.07.05.

⁴⁴ *Water cannon put end to mediation*. Irish News. 14.07.05.

⁴⁵ *Petrol bombs thrown in city clash*. BBC News. 23.08.05. Rioters in Belfast on 5/6 September 2005, included a five-year old child (who was held by police before being returned home). *Rioter, 5, is caught*. Newsletter. 07.09.05

⁴⁶ *Police ‘in denial’ on street violence*. Belfast Telegraph. 23.08.05

⁴⁷ In the Patten report, public order equipment was understood as being the following: water cannon, malodorous substance, sticky shocker, pepper spray, CS/CN gas, ring airfoil projectile, sponge grenade, bean bag, foam baton, multiple rubber balls and plastic baton rounds. Of these, the PSNI currently use water cannon, CS gas, and AEPs (plastic baton rounds). *Patten Report*. p. 55

Another cause for concern is the manipulation of young people by adults with regard to communal violence. Media reports have indicated that young people are being incited by text message, while they are in school, to participate in the violence.⁴⁸ This method of recruitment was most effectively used in the riots 10-13 September 2005. Research carried out by the Policing Board into the relationship between children/young people and community violence in North Belfast, found clear examples of adults orchestrating and encouraging them to become involved in community violence.⁴⁹ Children/young people in more deprived areas of Belfast are being clearly socialised into violence, becoming 'recreational rioters'. The Policing Board's research indicated the very wide experiences of violence and public disorder children/young people in North Belfast had suffered. Particularly pertinent, considering events in September 2005, was their attitude towards the police; 27% of those questioned believed that attacking the police was 'ok', and 22% thought it was 'ok' to stone Army vehicles.⁵⁰ BIRW believe that more research needs to be done into the recruitment and role of children and young people in community violence in Northern Ireland. We believe this is particularly important considering the extent of recent riots, and the extensive use of AEPs, as well as live fire, in controlling this violence.

We urge the Joint Committee to remind the Government of its commitments to the human rights of children and young people; and to seek alternative methods of controlling youth violence. We also ask the Joint Committee to encourage the Government to conduct research into the underlying causes of children and young people's participation in violence.

Use of water cannon

British Irish RIGHTS WATCH is concerned by the deployment of water cannon to control rioters in Northern Ireland. At the time of our submission to CAT (2004), the PSNI had purchased six new water cannon, and we raised concerns about their possible use. We believe that water cannon can be potentially harmful as a crowd control weapon. In particular, their indiscriminate nature remains problematic – especially in situations of violence where children and young people are present. Water cannon were deployed on 12 July 2005. Fr Aidan Troy, a well known mediator in such situations, described his own experiences: "The force of it when it hits you in the small of the back is like someone hitting you with a club or a stick....if the water cannon was able to lift me up, and I'm a little overweight, what could it do to them [referring to small children]."⁵¹

⁴⁸ *Loyalist rioters recruit children by text message.* Ulster Television. 06.09.05

⁴⁹ 'Young people's attitudes and experiences of policing, violence and community safety in North Belfast'. Northern Ireland Policing Board. June 2005.
<http://www.nipolicingboard.org.uk/publications/publications.htm>

⁵⁰ *Ibid.* p. 39

⁵¹ *Water cannon put end to mediation.* Irish News. 14.07.05.

British Irish RIGHTS WATCH ask the Joint Committee to urge the Government to be cautious in the deployment of water cannon and to develop guidance to ensure they are used as safely as possible.

Use of CS Incapacitant spray

CS spray was introduced in 2003, and is carried by on-duty officers as part of their regular patrol equipment. By mid November 2004, it had been deployed on 39 occasions and discharged 23 times. BIRW is encouraged to see that each of these 23 incidents has been referred to the Police Ombudsman for investigation. We feel that the presence of an oversight structure goes some way to ensuring that due care and attention is given before deployment; which in turn should limit the spray's use. We are encouraged by the Ombudsman's recommendation to the PSNI that CS spray should not be used as a dispersal weapon in street disorder.⁵² However, we are concerned that automatic referral has now ceased following a change of policy by the Ombudsman, and cases only come under scrutiny if a complaint is made.⁵³

British Irish RIGHTS WATCH ask the Joint Committee to encourage the Government to ensure that all cases of CS spray use are automatically referred to the Police Ombudsman.

CS, deployed either as a spray or a projectile, is potentially hazardous, both to the public and to police officers. It is an irritant that can damage the eyes and cause severe problems for people with respiratory disorders such as asthma, skin conditions such as dermatitis, and other disorders such as hypertension, all of which are common conditions among the general population and not necessarily obvious to police officers. In particular, those wearing soft contact lenses will suffer severe pain where the CS is able to penetrate and become trapped between the eyeball and the lens.⁵⁴ The police guidelines on the use of CS spray caution against its use on people who suffer from mental illness, have consumed drugs and/or alcohol, or who may be vulnerable through age. BIRW believe that judgements about mental illness, drugs and alcohol consumption are difficult for officers to make in often tense situations.

Research into the effects – particularly the long-term effects – of CS is lacking. Police officers in particular run a high risk of contamination when CS is used,

⁵² *Annual Report and Statement of Accounts, April 2004 to March 2005*. Office of the Police Ombudsman. p. 33
<http://www.policeombudsman.org/publicationsuploads/Annual%20Report%2004-5.pdf>

⁵³ The policy of automatic referral of CS spray incidents to the Police Ombudsman finished at the end of 2004. Ibid. p. 25

⁵⁴ *CS Incapacitants. Guidelines for Police Medical Professionals*. Appendix D. Police Service of Northern Ireland. CS Incapacitant Spray. 19.05.04, updated 31.05.05. www.psnipolice.uk. p. 17

whether by themselves or by fellow officers, and also run the additional risk of frequent exposure. The difficulty of de-contaminating both the skin and clothing after exposure is a further concern. While CS spray is not fully sanctioned for use at public order events, guidelines do allow its use by officers who may be “isolated and otherwise vulnerable”.⁵⁵ Two separate incidents in September 2005 have seen the use of CS spray as a method of crowd control. It has been alleged that the first incident, in Cushendall, saw a 14 year-old boy sprayed directly in the face.⁵⁶ CS spray was used in the second incident, in Andersonstown, Belfast, against a gang of men. British Irish RIGHTS WATCH wholly condemns the use of CS spray against children. While we are encouraged that the Police Ombudsman may be invited to investigate the Cushendall incident, we remain deeply concerned at the alleged method of its deployment, and the youth of the alleged victim. We are also concerned by allegations that in Andersonstown, CS spray was used on individuals who had already been restrained by handcuffs.⁵⁷ The use of CS, whether in a spray or a projectile, violates the prohibition on torture and cruel, inhuman or degrading treatment because it is designed to modify behaviour through the infliction of pain and intense discomfort.

We encourage the Joint Committee to ask for an outright ban on the deployment of CS spray in public order situations.

Use of tasers

British Irish RIGHTS WATCH has strong reservations about police employment of tasers. The taser is designed to administer a 50,000 volt charge to the suspect, via two darts. The Chief Constable of Greater Manchester Police Force said, after being shot by one: “I couldn't move, it hurt like hell. ... I've never experienced anything like that. You just seem to freeze.”⁵⁸ BIRW considers that tasers fall within the boundaries of torture; the infliction of pain and suffering on individuals to modify their behaviour. The operational guidance on the use of tasers during the trials that relate to what is euphemistically described as “aftercare” are particularly worrying. They suggest that taser barbs may become attached to sensitive areas such as the face, eyes, neck or genitals, in which case they must be removed by qualified medical personnel, almost certainly at a hospital.⁵⁹ Barbs removed from the skin have to be regarded as biohazards.⁶⁰ A person hit by a taser who has a cardiac pacemaker fitted must

⁵⁵ Ibid. p. 5.

⁵⁶ *Ombudsman is asked to probe riot.* BBC News. 04.09.05

⁵⁷ “The police forced their way into the public house and pulled people out, attacking them with batons, putting them on the ground, handcuffing them and spraying CS spray at them. *Police 'heavy-handed' as loyalist parade attacked claims local SF councillor.* Derry Journal. 30.08.05

⁵⁸ *Chief Constable hit by Taser gun.* BBC News. 05.07.05

⁵⁹ *Operational Guidance on the use of Tasers.* August 2004. Association of Chief Police Officers. para. 11.5

⁶⁰ Ibid. para. 11.4

go straight to hospital, and consideration should be given to sending others who have a medical condition, which might increase the risk of using a taser, to hospital.⁶¹ The manufacturers of tasers recommend against their use on people with heart problems or pregnant women, both of which are conditions which may not be evident to a police officer. They also say they should not be fired at children, but as the history of plastic bullets shows, children all too often get in the way.

An Amnesty International report examining taser use in the United States, alleged that over 70 people have died after being struck by a taser.⁶² BIRW is concerned that the lack of a full inquiry into the deployment and usage of tasers may see similar deaths in the UK. We are not satisfied by Independent Police Complaints Commission assurances that it is fully satisfied with the year-long trial which occurred prior to the introduction of tasers, and the fact that "nobody suffered any serious injuries".⁶³ We believe it is only a matter of time before serious injury, or even death, is caused by a taser.

Tasers are only currently available to firearms officers in the UK and not to 'frontline officers'; but the 7 July bomb attacks in London have indicated that this may potentially change.⁶⁴ It is of particular concern that a taser was deployed during the arrest of a suspected suicide bomber in Birmingham on 28 July 2005.⁶⁵ The key concern is the possible presence of explosives, and the risk that the shock emitted by a taser might detonate them.⁶⁶ In high density population areas, the detonation of what might be a significant amount of explosives has the potential to cause numerous deaths. A similar arrest occurred at Manchester airport, where the use of a taser, and the possibility of explosives being present, combined with large amounts of fuel, could have had catastrophic effects.⁶⁷ Tasers can also cause conflagration, especially if they come into contact with petrol, alcohol, or CS spray.⁶⁸

We understand that the Chief Constable of the PSNI has made an operational decision not to deploy tasers in Northern Ireland.⁶⁹ We believe this to be a wise decision, because the potential effects of tasers fired where rioters are throwing petrol bombs could be lethal. However, tasers are still available to the PSNI should their policy change, which is why we have included the above comments in this submission.

⁶¹ Ibid. para. 11.6

⁶² *United States of America. Excessive and lethal force? Amnesty International's concerns about deaths and ill-treatment involving police use of tasers.* 30.11.04. <http://web.amnesty.org/library/index/engamr511392004>

⁶³ *IPCC statement.* 30.11.04 http://www.ipcc.gov.uk/news/pr301104_tasers.

⁶⁴ *Police play down taser blast risk.* BBC News. 29.07.05.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ *Man held in airport security alert.* Ulster Television. 23.09.05

⁶⁸ *Operational Guidance on the use of Tasers.* August 2004. Association of Chief Police Officers. para. 7.4

⁶⁹ Response to Inquiry under the Freedom of Information Act, from the PSNI.

British Irish RIGHTS WATCH urges the Joint Committee to call for a ban on the use of tasers by UK police forces.

RUC AND THE PSNI

CAT Conclusions and Recommendations

“3(a). the dissolution of the RUC”

Unfortunately the UN Committee against Torture misunderstood the situation regarding the establishment of the PSNI. The RUC was not dissolved, but was re-named, and a programme of reform was introduced following recommendations by the Patten Commission. British Irish RIGHTS WATCH has welcomed this programme of reform. However, BIRW would like to draw the Joint Committee's attention to three outstanding issues regarding the PSNI.

- **Human rights training**
- **Recruitment**
- **Ongoing protection of informants**

Human rights training

The report of the Independent Commission on Policing for Northern Ireland (Patten Commission) recommended a human-rights-based approach to policing, incorporating a new Code of Ethics and comprehensive human rights training for all police officers.⁷⁰ A training programme for new recruits and serving officers has been drawn up and implemented, and the Northern Ireland Human Rights Commission has observed and reported on training sessions. Having examined the reports of the NIHRC and those published by the Oversight Commissioner and the Northern Ireland Policing Board, British Irish RIGHTS WATCH is concerned that training in human rights principles and their practical application has not been sufficient to ensure that respect for human rights occupies the central and ongoing place in policing envisaged by the Patten Commission.

Firstly, while the Police Service of Northern Ireland has achieved a great deal in educating its staff on human rights issues, there remains a concern that such work is reactive and not proactive. The absence of an action plan to further implement human rights training, and indeed the absence of the development of a wider philosophy of human-rights-oriented policing, are a disappointment.⁷¹

⁷⁰ Patten Report at paras. 4.8 and 4.9. A Code of Ethics was launched in 2003 and became a disciplinary code. See *Code of Ethics for the Police Service of Northern Ireland*, available at http://www.psni.police.uk/nipb_ethics-nonotes-1.pdf

⁷¹ The Office of the Oversight Commissioner also notes the problems of the absence

Secondly where human rights training has been introduced, for example the Course for All, there is concern from both the Northern Ireland Human Rights Commission and the Policing Board, that the aims of such training have not been fully met.⁷² There is also concern about the lack of refresher courses and the absence of any plans to re-run the course in either its original or updated format.⁷³ The result is a police force which appears to have a relatively limited knowledge of human rights. For example, research by the Policing Board survey found the following: 52% of police officers believed they could use lethal force where such force is necessary and appropriate, rather than where it is absolutely necessary to do so.⁷⁴ This is an issue of serious concern for BIRW. Similarly, while 83% of officers knew that informants/covert human intelligence sources can be used only if they do not incite criminal offences, 11% still believed they could be used even where they incited crime, as long as they furthered the investigation.⁷⁵ Considering the extensive history of collusion in Northern Ireland, BIRW views this research with deep anxiety.

British Irish RIGHTS WATCH urges the Joint Committee to encourage the Government to improve the quality and quantity of human rights training implemented within the PSNI. In particular, to develop and implement refresher courses on human rights; and to review and, where necessary, update course material so that it adequately reflects changes in legislation.

Recruitment

Recruitment plays a key role in the ability of the PSNI to effectively and fairly police all of Northern Ireland's communities. The Patten report recommended that civilian members of the police force should be "... a balanced and representative civilian workforce".⁷⁶ The Oversight Commissioner notes that the PSNI has not prepared a formal strategy to address this representation - there have been only minimal increases in Catholic civilian staff since 1999.⁷⁷

of a plan for future actions with a time line. *Overseeing the Proposed Revisions for the Policing Services of Northern Ireland – Report 13*. Published 09.06.05.
www.oversightcommissioner.org/reports/pdf/june2005.pdf

⁷² *Human Rights Annual Report 2005*. The Northern Ireland Policing Board. p. 3
http://www.nipolicingboard.org.uk/word_docs/PDFs/HR_main.pdf

⁷³ *Ibid.* p. 3

⁷⁴ *Ibid.* p. 146

⁷⁵ *Ibid.* p. 152

⁷⁶ *Overseeing the Proposed Revisions for the Policing Services of Northern Ireland – Report 13*. Published 09.06.05. p. 109
www.oversightcommissioner.org/reports/pdf/june2005.pdf

Catholic civilian support staff has increased by only 2.2% from 12.3% in 1999 to 14.5% as at March 2005. *Overseeing the Proposed Revisions for the Policing Services of Northern Ireland – Report 13*. Published 09.06.05. p. 109
www.oversightcommissioner.org/reports/pdf/june2005.pdf

British Irish RIGHTS WATCH call on the Joint Committee, to encourage the Government to create and promote a balanced civilian workforce within the Police Service of Northern Ireland.

British Irish RIGHTS WATCH supported the renewal of the 50:50 recruitment policy in March 2004 for regular police officers. We believe that the scheme has increased Catholic participation in policing; and we are encouraged by the fact that 17.8% of Police Officers are now Catholic.⁷⁸ While we believe that this figure is still too low, we do recognise that responsibility for encouraging Catholics to apply to the police force lies not only with the PSNI but also with the community.

British Irish RIGHTS WATCH call on the Joint Committee to recommend the PSNI redouble its efforts to encourage Catholic participation in the Police Service.

Ongoing protection of informants

Despite the reforms by the PSNI regarding the recruitment and handling of informants, BIRW remains extremely concerned at the PSNI's apparent inability to bring to book serious paramilitary criminals. We believe that one of the reasons for this failure is that the culture of placing greater value on intelligence than on saving lives or solving crimes is still endemic within the PSNI. It is clear that urgent and radical reform is required in this area.

We ask the Joint Committee to call on the Government to establish a wholly independent review of the PSNI's arrangements for, and relationships with, informants.

HUMAN RIGHTS ACT

CAT Conclusions and Recommendations

"3(b). The entry into force of 2000 of the Human Rights Act"

Derogating from Human Rights Conventions

BIRW is highly disturbed at Prime Minister Blair's declared intention to "amend... the Human Rights Act in respect of the interpretation of the European Convention on Human Rights", so as to enable the deportation of foreign nationals perceived to be a threat to national security.⁷⁹ The Government's previous attempts to deport foreigners on this ground have thus far been prevented by the judiciary, and under Article 3 of ECHR which prevents

⁷⁸ Northern Ireland Policing Board, Annual Review 2004-2005. p. 6
www.nipolicingboard.org.uk.

⁷⁹ Prime Minister's press conference 05.08.05
<http://www.number10.gov.uk/output/Page8041.asp>

repatriation of individuals to countries where they might face torture or ill treatment. Mr Blair has sought agreements from countries such as Jordan that any individuals who are returned, will not be subject to inhumane treatment. BIRW is anxious about these agreements, and does not consider them suitable protection for such individuals. The UK has a duty under the Convention against Torture and under international law to prevent torture; and in this case to protect non-British nationals from becoming victims of torture. Jordan, and the other states on Mr Blair's list (including Algeria and Lebanon) have a consistently low standard of human rights protection, and have attracted a high number of allegations of torture. We believe that any repatriation will result in torture and inhumane treatment – a direct violation of the UK's international obligations.

We ask the Committee to press the Government not to derogate from Article 3 of the ECHR.

BIRW is concerned that any derogation from human rights instruments will set a standard for human rights protection in the UK. In his 5 August briefing, Mr Blair clearly laid out his belief that national security took precedence over human rights. This is of great concern to BIRW. In Northern Ireland, human rights were subsumed by national security issues and this resulted in the deaths of many innocent people, the victimisation of individuals and communities, wrongful imprisonment and state collusion.

We ask the Committee to encourage the Government to remain committed to international human rights standards.

Detention

BIRW is concerned about attempts, by the Home Secretary, to extend the time the police are able to detain an individual without charge from two weeks to three months.⁸⁰ This legislative change, if implemented, would directly contravene Article 5 of the European Convention on Human Rights. The UK has already experienced arbitrary detention in the form of internment in Northern Ireland during the 1970s. It was shown to be a violation of human rights, and an ineffective method of preventing terrorism. BIRW is concerned by the attitude of the Lord Chancellor to this proposed extension. He claims that three months detention is a "sensible period to detain suspects while sensible investigation is going on".⁸¹ We are also concerned that any attempt to enact this legislation will ensure an automatic derogation from Article 5 of the European Convention on Human Rights. This clearly states: "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and

⁸⁰ Ibid.

⁸¹ *Secret terror courts considered*. BBC News. 09.08.05

shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”⁸²

BIRW encourages the Joint Committee to oppose prolonged detention without trial.

POLICE OMBUDSMAN

CAT Conclusions and Recommendations
“3(e). Office of the Police Ombudsman”

Police Ombudsman

British Irish RIGHTS WATCH has been encouraged by the establishment of the office of the Police Ombudsman, who has carried out investigations into thousands of complaints of police abuse. We are pleased to note that in her most recent annual report, the Ombudsman commented on the downward trend in the number of complaints since 2000.⁸³ We hope that this is a positive sign of the improvement of the PSNI's relationships with Northern Ireland's communities.

The experiences of those who have had dealings with the Police Ombudsman have varied widely. On occasions both complainants and NGOs working with them have found that their cases were not handled well; they were not kept fully informed about their cases, and that important documents were withheld from them. Similarly, there have been occasions where lawyers have complained that they have been sidelined or excluded from meetings between the Ombudsman's office and their clients.

British Irish RIGHTS WATCH would like to see more transparency in the operation of the Police Ombudsman's office and its handling of complaints.

BIRW is concerned that the remit of the Police Ombudsman's office, prevents her from investigating the behaviour of officers who have retired from the force. As some of the Ombudsman's cases stem from the 1980s and early 1990s, this exclusion has, on occasion, hindered the Police Ombudsman's investigation and potentially undermined its standing within the community.

We also continue to be disappointed that the Police Ombudsman's powers do not enable her to investigate cases of alleged misconduct by the British Army,

⁸² European Convention on Human Rights. <http://www.hri.org/docs/ECHR50.html>

⁸³ *Drop in complaints against police*. Press release. 21.07.05. Office of the Police Ombudsman
http://www.policeombudsman.org/press.cfm?Press_ID=104&action=detail&year=2005

despite the fact that the Army acts in a support role for the police, who retain primacy over security policy. The fact that the Ministry of Defence conducts its own investigations into misconduct is not reassuring, as we believe that it is not sufficiently impartial, nor are the results of its investigations made public. Very serious offences may be referred by the MoD to the PSNI, or the PSNI may investigate independently. The Independent Assessor of Military Complaints Procedures in Northern Ireland, an office that was created in 1991 to act as a “watchdog” for the procedures used by the Army to deal with complaints, does not examine individual complaints about the actions of individual soldiers. In addition, the Independent Assessor does not have a dedicated staff of independent investigators, nor anything like the resources of the Police Ombudsman.

We are also concerned that the Police Ombudsman is unable to investigate the firing of plastic bullets/AEPs by the army, even in situations when they are fired at the same time, and at the same incident, as the PSNI are using such weaponry.

British Irish RIGHTS WATCH would like the Joint Committee to explore what efforts are being made to ensure greater accountability for the actions of the armed forces in Northern Ireland. BIRW ask the Joint Committee to recommend that the Police Ombudsman’s powers in this sphere are extended.

NORTHERN IRELAND HUMAN RIGHTS COMMISSION

CAT Conclusions and Recommendations

“3(e). the establishment of the Northern Ireland Human Rights Commission”

British Irish RIGHTS WATCH welcomed the establishment of the Northern Ireland Human Rights Commission. However, we would like to raise concerns about several elements of its structure and operations, which we believe are inhibiting its effectiveness.

- **Powers**
- **Appointment of Commissioners**
- **Bill of Rights**

Powers

The Northern Ireland Human Rights Commission (NIHRC) is limited in its powers, and as such is not compliant with the Paris Principles. More specifically, the inability of the Commission to compel the attendance of witnesses or production of documents has undermined its work. In 2001 the Commission submitted a review of its powers to the Government. The Commission is still awaiting an

adequate response to the recommendations contained in this review. The Government did make a statement in December 2004, which stated its agreement, in principle, to an expansion of the Commission's powers – namely the right of access to places of detention and the power to compel evidence and witnesses in conducting its investigations.⁸⁴ However, it does not appear that a full statement on these issues has yet been produced as promised.⁸⁵

The UN Committee against Torture recommended the appointment of the NIHRC as one of the monitoring bodies under the Optional Protocol to the Convention on Torture, and which establishes a system of regular visits by independent national and international bodies to places of detention in signatory states.⁸⁶ The UK ratified the Optional Protocol on 10 December 2003. While we were encouraged by the Northern Ireland Office (NIO) December statement on this issue, we were disappointed to see the Commission had to resort to court action to gain access to a juvenile justice centre - Rathgael. Access has now been granted, and the case was settled without recourse to full judicial review. While BIRW does not take a position on whether the NIHRC should have full and continued access to places of detention in Northern Ireland, we do feel that access 'as and when required' would be of benefit to the Commission and its work.

British Irish RIGHTS WATCH call on the Joint Committee to encourage the Government to widen the powers of the Northern Ireland Human Rights Commission, in line with the Paris Principles.

Appointment of Commissioners

BIRW would like to raise concern about the problems in the recruitment and retention of members of the Commission. Firstly the time taken by the NIO to source suitable candidates for the post of Chief Commissioner seems unduly long. While the NIO cannot be held responsible for any dearth of candidates, we believe that the recruitment process commenced too late, resulting in

⁸⁴ *Competition for Chief Commissioner of the Northern Ireland Human Rights Commission* . Northern Ireland Office press statement. 17.12.05
<http://www.nio.gov.uk/media-detail.htm?newsID=10675>

⁸⁵ In his December statement, the Secretary of State for Northern Ireland indicated that a full statement on the matter would be issued in January 2005. There is no evidence from NIO or NIHRC that such a statement has been forthcoming, 'A full statement of the Government's conclusions on each of the NIHRC's recommendations will be published in the New Year.' *Competition for Chief Commissioner of the Northern Ireland Human Rights Commission* . Northern Ireland Office press statement. 17.12.05
<http://www.nio.gov.uk/media-detail.htm?newsID=10675>

⁸⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment. 33rd Session, 15-26 November 2004. *Conclusions and recommendations of the Committee against Torture. United Kingdom of Great Britain and Northern Ireland, Crown Dependencies and Overseas Territories.*

several months without a Chief Commissioner. Secondly, the resignation of Commission members has ensured that the Commission has been operating at limited capacity.⁸⁷ While BIRW welcomes the new appointments to the Commission, as announced in June, we have reservations about the human rights credentials of some appointees.⁸⁸ The original membership included a high level of human rights expertise; that has now been somewhat watered down. We are concerned that political balance has become of greater consideration than human rights knowledge and experience. The new appointees may not have a sufficient collective understanding of human rights, nor, a shared perspective on human rights norms. We fear this will effectively undermine the Commission's ability to operate in the manner in which it was intended. This Joint Committee made recommendations, in its 2003 report on the Workings of NIHRC, to similar effect.⁸⁹ It has become clear that these recommendations have been ignored. We have always argued that the Commission should be appointed independently, rather than by the Secretary of State. Finally, we would point out that governments come and governments go, and even if it were not for the concerns outlined above, we would prefer to see the independence of the Commission enshrined in legislation, to safeguard it from the predations of a less enlightened regime.

BIRW encourages the Joint Committee to urge the Government to reform the appointment process, taking into account previous recommendations from this Committee.

Bill of Rights

The Bill of Rights serves as a good example of the difficulties faced by the Commission, whose effectiveness has been hindered by personnel and political problems. We hope that the new Commission is able to revitalise the process of constructing a Bill of Rights for Northern Ireland, and to encourage greater community 'buy-in' for the project as a whole.

Depressingly, the government has frequently failed to defend the Commission sufficiently robustly. Instead, it has left the Commission to answer dozens of patently ill-intentioned questions set down in Parliament and in the Northern Ireland Assembly, at disproportionate cost in terms of its already scarce resources. It has also withheld the Commission of the powers and the resources it

⁸⁷ Since 2002, the number of commissioners has declined from thirteen to six. *Human rights boss raps lack of support*. Belfast Telegraph. 23.02.05.

⁸⁸ *New appointments to Northern Ireland Human Rights Commission*. Northern Ireland Office Press Release. 16.06.05. <http://www.nio.gov.uk/media-detail.htm?newsID=11678>

⁸⁹ *Work of the Northern Ireland Human Rights Commission*. Joint Committee for Human Rights. 15.07.03. p. 17. <http://www.publications.parliament.uk/pa/jt200203/jtselect/jtrights/132/13202.htm>

needs to operate effectively. The government has consistently failed to defend the Commission from often quite scurrilous attacks, most recently directed against the new Chief Commissioner, made in Parliament. It is vital that the government makes it clear that it supports the Bill of Rights and the vital work of the Commission in helping to bring it into being.

BIRW ask the Joint Committee to encourage the Government to increase its moral and political support for the NIHRC.

USE OF EVIDENCE OBTAINED BY TORTURE

CAT Conclusions and Recommendations

“C. Subjects of concern

4 (a). remaining inconsistencies between the requirements of the Convention and the provisions of the State party’s domestic law which, even after the passage of the Human Rights Act, have left continuing gaps; notably:

(i) article 15 of the Convention prohibits the use of evidence gained by torture wherever and by whomever obtained; notwithstanding the State party’s assurance set out in paragraph (g), *supra*, the State party’s law has been interpreted to exclude the use of evidence extracted by torture only where the State party’s officials were complicit; and

(ii) article 2 of the Convention provides that no exceptional circumstances whatsoever may be invoked as a justification for torture; the text of Section 134(4) of the Criminal Justice Act however provides for a defence of ‘lawful authority, justification or excuse’ to a charge of official intentional infliction of severe pain or suffering, a defence which is not restricted by the Human Rights Act for conduct outside the State party, where the Human Rights Act does not apply; moreover, the text of section 134(5) of the Criminal Justice Act provides for a defence for conduct that is permitted under foreign law, even if unlawful under the State party’s law;”

British Irish RIGHTS WATCH draws the Committee’s attention to the Government’s attempts to put evidence gained under torture to UK courts, tribunals and similar bodies. The A & Others v Secretary of State, Home Department which is to be heard before the House of Lords in October. BIRW, along with 13 other NGOs, is a third part intervener in this case.

10 men held indefinitely under the Anti-terrorism, Crime and Security Act (2001) submitted an appeal against the 2003 judgments of the Special Immigration Appeals Commission (SIAC), including SIAC’s ruling on the admissibility of evidence obtained by torture. This appeal was rejected. The Court of Appeal, by a two-to-one ruling, decided that evidence gained through torture could be

used so long as it had not been procured directly by UK state agents or UK agents had not connived in its procurement.

BIRW was encouraged by the dissenting position taken by Lord Justice Neuberger, who indicated that evidence gained through torture would contravene the right to a fair trial, as the individual whose evidence was utilised may not be present to be cross-examined.⁹⁰ However, we were alarmed by the then-Home Secretary's attitude towards this ruling. David Blunkett stated "we unreservedly condemn the use of torture and have worked hard with our international partners to eradicate this practice. However, it would be irresponsible not to take appropriate account of any information which could help protect national security and public safety."⁹¹ We do not believe that the submission of evidence gained through torture is compatible with an unreserved condemnation from the Government. As we have seen in Northern Ireland, the use of national security as a justification for the curtailment of human rights is both illegitimate and counter-productive.

We believe that the UK Government's position has the potential to lead to the 'contracting out' of torture. Allegations made in the national media reinforce this fear. Benyam Mohammed, an alleged Al-Qaeda terrorist, claims he was tortured in prisons in Pakistan, Morocco and Afghanistan, with the full knowledge of UK and US security officials.⁹² This goes against the very nature of the prohibition on torture which has a character of *obligatio erga omnes* – where each state has an obligation to humanity to ensure compliance with the prohibition. The prohibition is also absolute – where evidence elicited by torture has to be excluded from use in proceedings. This is cemented for the UK, in Article 6 of ECHR. The refusal to accept evidence obtained by torture is integral to the right to a fair trial, and to the prohibition of torture.

The use of ill-treatment in Northern Ireland and England from the 1970s onwards contributed to the wrongful imprisonment of innocent individuals. Cases such as the 'Guildford Four' and the 'Birmingham Six' clearly illustrate the problems of accepting tainted evidence in legal courts.

British Irish RIGHTS WATCH urges the Joint Committee not to condone the use of evidence obtained by torture in UK courts. We believe the UK government has a moral and legal obligation to uphold its commitment to the prohibition of torture and ill-treatment, in the domestic and international courts.

⁹⁰ *In the Supreme Court of Judicature Court of Appeal (Civil Division) on appeal from the Special Immigration Appeals Commission. Before: Lord Justice Pill, Lord Justice Laws and Lord Justice Neuberger. Between A, B, C, D, E, F, G, H, Mahmoud Abu Rideh, Jamal Ajouaou and Secretary of State for the Home Department. 11.08.04. para. 415*

⁹¹ Quoted in *Court rules that evidence gathered using torture can be used.* www.statewatch.org/news/2004/aug/06uk-torture.htm

⁹² *Suspect's tale of travel and torture.* The Guardian. 02.08.05

REPEAL OF EMERGENCY LAWS

CAT Conclusions and Recommendations

“4(c). the incomplete factual and legal grounds advanced to the Committee justifying the derogations from the State party’s international human rights obligations with respect to Northern Ireland, the absence of precise information on the necessity for the continued emergency provisions for that jurisdiction contained in the Terrorism Act 2000;”

Repeal of emergency laws

BIRW welcomes the Secretary of State's decision to repeal counter-terrorist legislation particular to Northern Ireland.⁹³ We look forward to the enactment of the Normalisation Programme. We believe that the continuation of the emergency provisions contained in the Terrorism Act 2000 has been unwarranted, and never accepted the premise that Northern Ireland needs emergency legislation. Part VII of the Act, which deals with Northern Ireland, has been renewed annually. We do not consider the provisions contained in Part VII necessary.⁹⁴ We consider this particularly pertinent as the Government seeks to introduce new restrictive legislation, which could lead to the declaration of a state of emergency in the UK.

With reference to serious civil disturbances witnessed in Northern Ireland in September 2005, we would like to sound a note of caution. We sincerely hope that this violence is not used by the Government as a justification to delay the full implementation of the Normalisation Programme.

BIRW ask the Joint Committee to encourage the Government to adhere to its timetable for the Normalisation Programme.

PRISONS

CAT Conclusions and Recommendations

“4(g). reports of unsatisfactory conditions in the State party’s detention facilities including substantial numbers of deaths in custody, inter-prisoner violence, overcrowding and continued use of ‘slopping out’ sanitation facilities, as well as

⁹³ Secretary of State publishes normalisation plans. NIO press release. 01.08.05. www.nio.gov.uk

⁹⁴ The Human Rights Committee, in its 2001 examination of the UK, expressed its concern that “despite improvements in the security situation in Northern Ireland, some elements of criminal procedure continue to differ between Northern Ireland and the remainder of the State party's jurisdiction.” See *Concluding Observations of the Human Rights Committee: United Kingdom of Great Britain and Northern Ireland, 6/12/2001, CCPR/CO/73/UK* at para.18

reports of unacceptable conditions for female detainees in the Hydebank Wood prison, including a lack of gender-sensitive facilities, policies, guarding and medical aid, with male guards alleged to constitute 80% of guarding staff and incidents of inappropriate threats and incidents affecting female detainees.

D. Recommendations

5(l). The State party should develop an urgent action plan, including appropriate resort to criminal sanctions, to address the subjects of concern raised by the Committee in paragraph 4(g) as well as take appropriate gender-sensitive measures.”

British Irish RIGHTS WATCH welcomes the acknowledgement by the UN Committee against Torture of the unsatisfactory conditions in the UK's detention facilities. BIRW was also encouraged to see that the Committee recommended that the UK should develop an urgent action plan to address this issue. Nonetheless BIRW remains greatly concerned about the state of Northern Ireland's prison regime. Despite a number of highly critical reports issued by UK prison inspectors, and the Northern Ireland Human Rights Commission, the prison service has implemented relatively limited changes to its regime, and conditions in prisons remain poor.

The issues of concern to British Irish RIGHTS WATCH are:

- **General prison conditions in Northern Ireland**
- **Separated prisoners**
- **Women prisoners and prison conditions at Ash House (Hydebank Wood Young Offenders Centre)**
- **Prison staff**
- **Human rights training**
- **Prisoner Ombudsman and complaints procedure**

General prison conditions

While British Irish RIGHTS WATCH believe that the prison estate in Northern Ireland is out-dated and inadequate; we welcome the announcement made by Robin Masefield, head of the Northern Ireland Prison Service, that the Magilligan Prison will be replaced by a new jail.⁹⁵ We look forward to learning in full the results of the Government's strategic review of the prison estate. BIRW has previously expressed concern that rather than the current two large, concentrated prisons for adults at Maghaberry and Magilligan, smaller, more modern facilities with a wider variety of regimes, including an open prison and a women's jail, would allow a much more flexible approach to the requirement to segregate some prisoners from others.

In our submission to the UN Committee against Torture (2004), we raised concern over the strip searching of prisoners, which we believe is a humiliating and

⁹⁵ *Magilligan Prison to be replaced.* BBC News. 14.09.05

degrading practice that can easily be abused. For example, strip searching before and after court hearings, legal consultations and family visits – even in cases where there has been no physical contact with any other person - can act as a disincentive to prisoners' attending hearings such as judicial review applications made on their behalf, or asking for legal or family visits. In our view, strip searching is unnecessary given modern technology, and subjects both male and female prisoners to humiliating and degrading treatment.

The issues of excessive strip searching and the restricted movement of inmates in Maghaberry prison were raised in a parliamentary question to the Secretary of State for Northern Ireland in 2004. In response, the Secretary stated that such searching was essential in order to protect the safety of prisoners and staff, and assured that "the level of searching that takes place in Maghaberry is the same across the rest of the UK for similar category prisoners."⁹⁶ However, in the House of Lords, the Home Office Minister of State for the Criminal Justice System and Law Reform later stated that the Northern Ireland Prison Service does not have a centralised database of search statistics, which means that it is impossible to compare the incidence of strip searches in Northern Ireland with other jurisdictions.⁹⁷ While we continue to call for an end to strip searching, British Irish RIGHTS WATCH believe that, if the current practice of strip searching be continued, such statistics should be compiled and be subject to public scrutiny.

We request the Joint Committee to ask the Government to abolish strip searching or, failing that, to reduce the number of searches. We encourage the Government to compile adequate guidelines as to when such searches are justified, and keep statistics subject to public scrutiny of its use.

BIRW would like to raise concern about the proposed introduction of PAVA spray (a kind of pepper spray) by the Northern Ireland Prison Service (NIPS).⁹⁸ The use of such sprays can be potentially hazardous to both the prison officer and the prisoner. We are particularly concerned by PAVA spray usage where a prisoner is already restrained, and where any administration would cause severe pain and suffering; or where the space in which it is used is relatively confined (a cell for instance), which would disproportionately concentrate the effects of the spray.⁹⁹

⁹⁶ *House of Commons Hansard Written Answers* for 8 June 2004 (pt 19). According to the Prisons and Young Offenders Centre Rules 1995, a prisoner may be searched whenever his cell is searched, whenever he may have come into contact with people from outside the prison, or at any time when the governor considers it necessary for the safety and security of the prison

⁹⁷ *Lords Hansard text*. 24.06.04 Column WA145.

<http://www.parliament.the-stationery-office.co.uk/pa/ld199900/ldhansrd/pdvn/home.htm>

⁹⁸ *Minutes of the Prisons Board Meeting*, April 2005. Item 5.

http://216.239.59.104/search?q=cache:YnSXHrNs2IUJ:www.niprisonservice.gov.uk/pdfs/PubUploads/April_2005.pdf+hamill+report&hl=en

⁹⁹ Police policy on their use of CS spray clearly states that it should not be used in an

We urge the Joint Committee to oppose the introduction of PAVA spray into Northern Ireland's prisons, in line with Article 16 of the Convention against Torture.

Separated prisoners

British Irish RIGHTS WATCH continues to take a long-term interest in the detention conditions of paramilitary prisoners in Northern Ireland – both in terms of their safety and their right to be treated in conformity with domestic and international laws and rules relating to the human rights of prisoners. We are concerned about the disparity in treatment between separated prisoners and the rest of the prison population.

The separated regime, introduced into Maghaberry prison in 2003, followed recommendations from the Steele Review, which concluded that a degree of separation was required to protect members of opposing paramilitary factions from one another, as well as to protect ordinary prisoners. The NIPS introduced a Compact for Separated Prisoners which details the separated regime, and must be signed by any prisoner who opts to become a separated prisoner. BIRW has concerns, firstly, that the reality of the separated regime is far more restrictive than the regime as detailed in the Compact. Secondly, that these restrictions violate the prisoner's rights. This is most apparent in the restrictions applied to prisoner's movements, which directly impact on a prisoner's ability to associate and his opportunities for education.

This has been further impacted by the application of the Prison and Young Offenders Centre (Amendment) Rules (Northern Ireland) (2004 Rules) which has ensured that certain social and educational provisions are no longer applicable to separated prisoners. While most prisoners "will be able to use their time constructively while in prison and will be encouraged to do so", for instance, to engage in education, the NIPS Annual Report 2004/5 indicates that for separated prisoners "constructive time" is defined simply as time out of their cells.¹⁰⁰ In contrast non-separated prisoners are able to partake of "all pursuits that play a part in the enhancement of an individual's skills, knowledge, attitudes and behaviour or contribute to the reduction in the likelihood of re-offending".¹⁰¹ BIRW feels that this differentiation will have a direct bearing on the ability of separated prisoners to safely and adequately reintegrate into the community on their release from prison. While BIRW is mindful of the safety of prison officers and prisoners, we are concerned that the operation of the 2004 Rules has a directly

enclosed area (e.g. car) nor on a subject who is restrained or handcuffed. CS *Incapacitant Spray*. Police Service of Northern Ireland. 19.05.04, updated 31.05.05. <http://www.psni.police.uk/cs-spray.pdf>

¹⁰⁰ Northern Ireland Prison Service Annual Report & Accounts for 2004/05. p. 41. <http://www.niprisonservice.gov.uk/pdfs/PubUploads/Annual%20Report%2004-05.pdf>

¹⁰¹ Ibid. p. 41.

detrimental effect on the rights and treatment of separated prisoners. Following recent correspondence with the NIPS, BIRW is encouraged that some small changes have been made, for instance, by the introduction of a live religious service every Sunday, and the instillation of a new library facility.¹⁰² We hope that such improvements will continue.

The introduction of the 2004 Rules has exposed separated prisoners to being subjected to a loss of remission for a disciplinary offence. This is a direct contradiction of the Government's explanation for revoking the Governor's power to award loss of remission as a punishment for non-separated prisoners, on the basis that "that power is incompatible with Article 6 of the European Convention on Human Rights". This amounts to another clear difference in the treatment of separated and non-separated prisoners in Northern Ireland. This discrimination is prohibited by Article 14 (ECHR); such separation is not a status conferred upon prisoners, but rather a safety measure for certain members of the prison population (despite the fact they may have committed the same types of crime as non-separated members of the general prison population).

The UN Basic Principles for the Treatment of Prisoners clearly lays out the need to treat prisoners "... with the respect due to their inherent dignity and value as human beings."¹⁰³ The NIPS clearly appears to be valuing separated and un-separated prisoners differently, in contravention of Principle 2, which notes: "There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."¹⁰⁴ The European Prison Rules are currently being revised. However, the 15th General Report from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, outlines some key changes which are pertinent in this context. We draw the Joint Committee's attention to the "inclusion of the precepts that 'persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody'"¹⁰⁵ BIRW is also encouraged by the inclusion of the precept: "restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed".¹⁰⁶ We feel that these principles are currently absent in some aspects of the prison regime in Northern Ireland.

¹⁰² Email correspondence between BIRW and Northern Ireland Prison Service 12.08.05

¹⁰³ Principle 1, UN Basic Principles for the Treatment of Prisoners. http://www.unhchr.ch/html/menu3/b/h_comp35.htm

¹⁰⁴ Principle 2, UN Basic Principles for the Treatment of Prisoners. http://www.unhchr.ch/html/menu3/b/h_comp35.htm

¹⁰⁵ *15th General Report*. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. 22.09.05. www.cpt.coe.int/en/annual/press/2005-09-22-eng.htm

¹⁰⁶ *Ibid.*

British Irish RIGHTS WATCH ask the Joint Committee to encourage the Government to reconsider its treatment of separated prisoners, and to be mindful of any regime which discriminates against them.

Women prisoners and conditions of detention at Ash House (Hydebank Wood Young Offenders Centre)

British Irish RIGHTS WATCH remains concerned that many of the issues raised in the CAT's Concluding Observations (2004), and by inspections carried out by NIHRC and HM Chief Inspector of Prisons, have yet to be adequately addressed by the Northern Ireland Prison Service. The relocation of female prisoners in June 2004, from Mourne House, a dedicated women's facility in an all male prison, to Ash House, part of Hydebank Wood Young Offenders Centre, appear to be problematic. An inspection in January 2005 was critical of conditions at Ash House; most pertinently, the inspectors voiced concern that all female prisoners were held at the same security rating, regardless of offence, and that this regime was over-restrictive.¹⁰⁷ BIRW is concerned that the location of the facility on a shared site with male prisoners is ensuring that female prisoners are held in restrictive conditions that are disproportionate to their crime and security risk.

BIRW would be interested to know the details of the review of the level of search policy which was to be carried out by the NIPS following the judicial review in Karen Carson's case.¹⁰⁸ Karen Carson brought a case against the Northern Ireland Prison Service in which she alleged she was subjected to a scheme of disproportionate strip searching following visits. The judgment indicated that the Prison Service needed to demonstrate that its search policy was proportionate and necessary, and took account of Articles 3 and 8 of the European Convention. While BIRW acknowledges the need to protect the safety of prisoners and prison officers, excessive strip searches have proven humiliating and degrading for prisoners, particularly for women.

BIRW ask the Joint Committee to encourage the NIPS to clarify its search policy in response to this judgment.

British Irish RIGHTS WATCH is impressed that the NIPS has increased the number of female prison officers at Ash House, where 28 out of 38 prison officers are now women.¹⁰⁹ However we are concerned that prison officers working with women

¹⁰⁷ *Report on an unannounced inspection of the imprisonment of women in Northern Ireland, Ash House Hydebank Wood Prison.* HM Chief Inspector of Prisons and the Chief Inspector of Criminal Justice in Northern Ireland. 28-30 November 2004. p. 4. <http://www.niprisonservice.gov.uk/pdfs/PubUploads/Ash%20House%20Final%20oc%2016%20May%202005%20with%20cover.pdf>

¹⁰⁸ *Judicial Review judgment.* NIPS Press release. 09.04.05. <http://www.niprisonservice.gov.uk/publicat-home.htm>

¹⁰⁹ *Report on an unannounced inspection of the imprisonment of women in Northern Ireland, Ash House Hydebank Wood Prison.* HM Chief Inspector of Prisons and the

who may be suicidal, depressed or prone to self-harming, may not have had adequate training. We are also concerned by the continued presence, of young women offenders (i.e. under 18 years of age) in the same regime as adult women prisoners. Inspections have indicated that there are not the appropriate educational and social facilities for these minors. We also have concerns that some prison staff are unaware of child protection issues, and thus unable to offer young women offenders the best care within a prison environment.¹¹⁰

We request the Joint Committee to encourage the Government to review levels of staff training within the NIPS, in particular for those officers dealing with girls or vulnerable women.

BIRW ask the Joint Committee to urge the NIPS to review the recommendations set forth in the Ash House Inspection, and other inspection reports, and to implement a programme of regime reform.

Prison staff

BIRW welcomes the announcement made by the NIPS to encourage applications from women and Catholics, who, the service acknowledges, are currently under-represented on the workforce.¹¹¹ The domination of the prison service by Protestants ensures that officers do not reflect the population they serve; and this can lead to discrimination/harassment of nationalist prisoners. We are also concerned about the disproportionate influence on the management of prisons wielded by the Prison Officers Association, the prison officers' trade union. Prison officers often challenge managers' decisions and orders as being in contravention of agreements made with the POA, and POA officials can and do act as intermediaries between staff and managers. This affects the day-to-day management of prisons and weakens managers' authority. We believe that the prison service as a whole would benefit from a complete overhaul similar to that undertaken for the police.

Human Rights training

British Irish RIGHTS WATCH believe that, in line with Article 10 of the Convention

Chief Inspector of Criminal Justice in Northern Ireland. 28-30 November 2004. p. 4. <http://www.niprisonservice.gov.uk/pdfs/PubUploads/Ash%20House%20Final%20OC%2016%20May%202005%20with%20cover.pdf> p. 21

¹¹⁰ This issue had been previously raised in the *Summary Report on the Mourne House Enquiry*. Northern Ireland Prison Service, January 2005. There is no public documentation to indicate that recommendations on staff training have been introduced. <http://www.niprisonservice.gov.uk/pdfs/PubUploads/A%20Report%20of%20the%20Mourne%20House%20Enquiry.pdf>

¹¹¹ *Night Custody Officers*. Press Release. 06.09.05. Northern Ireland Prison Service. <http://www.niprisonservice.gov.uk/jobs.cfm>

against Torture, human rights training for prison officers should be ongoing, rather than limited to small elements of induction training. We would raise concern by the fact that only 77% of planned training days were delivered in 2004/05.¹¹²

We would therefore welcome the assistance of the Joint Committee in asking the Government for an independent and urgent review of the human rights training provided to prison staff. In particular, we would like such a review to examine the extent and content of human rights training, specifying the degree of human rights training incorporated into induction training for new prison officers, and the amount of ongoing human rights training to be provided to existing prison officers.

Prisoner Ombudsman and complaints procedure

British Irish RIGHTS WATCH welcomed the principle that prisoners should have an effective mechanism for making complaints. However, BIRW feels that a Prisoner Ombudsman, like the office of the Ombudsman created in 2000 for the NIPS, should encourage transparency and accountability within the prison system. The system of prisoner complaints and the creation of the post of Prisoner Ombudsman were the subject of a public consultation. BIRW rejected the review-body's proposal outright as we did not believe that it would create an effective, independent and expeditious prisoner complaints procedure.¹¹³ The Prison Service announced a slightly modified version of the proposed ombudsman and complaints system.¹¹⁴ This revised proposal does not, in our view, offer an adequate mechanism for prisoners to complain about their treatment in detention. In particular, we do not think that it is appropriate to require a prisoner to make his or her initial complaint to the person whose decision or action is the subject of the complaint. Nor do we consider it necessary or expeditious for there to be three internal stages for a complaint to follow before it reaches the Ombudsman. British Irish RIGHTS WATCH also believe that the Ombudsman should have much greater access to necessary documentation in order to ensure that he can do a thorough and effective job.

The Prisoner Ombudsman will only consider complaints referred to him after the exhaustion of the internal NIPS complaints process.¹¹⁵ A recent inspection of Ash House indicated that information available to prisoners about the complaints procedure was inadequate, and that few were aware of how to access the

¹¹² Northern Ireland Prison Service Annual Report & Accounts for 2004/05. p. 5. <http://www.niprisonservice.gov.uk/pdfs/PubUploads/Annual%20Report%2004-05.pdf>

¹¹³ British Irish RIGHTS WATCH response to the Northern Ireland Prison Service's proposals for a prisoner ombudsman, May 2004.

¹¹⁴ Outcome of a Public Consultation on Proposals for the Introduction of a Revised Prisoner Complaints Procedure and Prisoner Ombudsman. 21.09.04. <http://www.niprisonservice.gov.uk/consultation.htm>

¹¹⁵ Press release: Prisoner Ombudsman for Northern Ireland Appointed. 25.02.05. <http://www.niprisonservice.gov.uk/publicat-home.htm>

appeals process.¹¹⁶ Prisoners were unhappy about the manner in which complaints were dealt with, and found the process unfair. Systems for monitoring or tracking complaints were felt to be unsatisfactory.¹¹⁷ An inspection of Magilligan Prison also revealed consistently low results against benchmark standards for prisoner complaints. For instance, 23% of prisoners stated they had been encouraged to withdraw a complaint, against a benchmark of 13%.¹¹⁸ Likewise, only 30% of prisoners felt their complaint had been dealt with fairly.¹¹⁹ BIRW is concerned that weaknesses in the system at this early stage, will undermine the purpose and mandate of the Prisoner Ombudsman.

BIRW is also concerned that there is an absence of a centralised system for the management and monitoring of complaints within the Northern Ireland Prison Service.¹²⁰ The UK Government submission to UNCAT indicated that such a system would be introduced.

British Irish RIGHTS WATCH request the Joint Committee to ask the Government if such a system has now been implemented. British Irish RIGHTS WATCH encourages the Committee to ask the Government to review the prisoner complaints procedure of the Northern Ireland Prison Service.

BIRW welcomes the “Blueprint for Strategic Development” instigated as a result of the Hamill Report; especially those “strands” which address regime development for women prisoners, and the prison estate.¹²¹ However, we

¹¹⁶ *Report on an unannounced inspection of the imprisonment of women in Northern Ireland, Ash House Hydebank Wood Prison.* HM Chief Inspector of Prisons and the Chief Inspector of Criminal Justice in Northern Ireland. 28-30 November 2004. p. 30

<http://www.niprisonservice.gov.uk/pdfs/PubUploads/Ash%20House%20Final%20OC%2016%20May%202005%20with%20cover.pdf>

¹¹⁷ Ibid. p. 13

¹¹⁸ *Report on an unannounced visit to Magilligan Prison.* HM Chief Inspector of Prisons and the Chief Inspector of Criminal Justice in Northern Ireland. 20-24 September 2004. pp. 32-33

<http://www.niprisonservice.gov.uk/pdfs/PubUploads/Magilligan%20FINAL1.pdf>

¹¹⁹ Ibid. p. 32-33

¹²⁰ *Report on an unannounced inspection of the imprisonment of women in Northern Ireland, Ash House Hydebank Wood Prison.* HM Chief Inspector of Prisons and the Chief Inspector of Criminal Justice in Northern Ireland. 28-30 November 2004. p. 30

<http://www.niprisonservice.gov.uk/pdfs/PubUploads/Ash%20House%20Final%20OC%2016%20May%202005%20with%20cover.pdf>

¹²¹ *Blueprint Strategic Development Programme. An update for stakeholders, July 2005.* http://www.niprisonservice.gov.uk/press/press-more.cfm?press_id=205.

The Hamill Report was a review of the Northern Ireland Prison Services Efficiency Programme. The Hamill Review's terms of reference were: “To review, and report with recommendations on, the NIPS strategy for reducing unit costs, having regard to

- the magnitude of the excess over unit costs in GB;
- the scope for more efficient deployment of staff;

remain concerned that the focus of any changes to prisons in Northern Ireland is based on cost effectiveness, with a marginalisation of prisoner welfare.

We request the Joint Committee to encourage the Government to adopt a rights-based approach to strategic development.

INVESTIGATIONS, INQUESTS AND INQUIRIES

CAT Conclusions and Recommendations

“C. Concerns

4(f) the investigations carried out by the State party into a number of deaths by lethal force arising between the entry into force of the Convention in 1988 and the Human Rights Act in 2000 which have failed to fully meet its international obligations.

D. Recommendations

5 (k) the State party should take all practicable steps to review investigations of deaths by lethal force in Northern Ireland that have remained unsolved, in a manner, as expressed by representatives of the State party, “commanding the confidence of the wider community.”

British Irish RIGHTS WATCH welcomes the UN Committee against Torture’s concern about the aforementioned issues. In our submission to UNCAT (2004) we outlined several specific elements of these issues, which we feel it would be beneficial to re-visit.

- **Human Rights Act, the Convention against Torture, and the McKerr case**
- **Inquests**
- **Inquiries Act 2005**

Human Rights Act, the Convention against Torture and the McKerr case

While British Irish RIGHTS WATCH was enthusiastic about the introduction of the Human Rights Act 2000, two crucial court decisions have impacted upon the

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- the opportunities for replacing prison officers, in respect of duties which do not involve the full range of prisoner supervision responsibilities, whether by employing staff in lower pay bands, or by contracting work out;
 - all other options for reducing staff and improving efficiency; and
 - the forecasts of prisoner numbers and places, how they will impact on NIPS costs, and the impact on these forecasts of expected changes in crime rates, detection and prosecution rates, sentencing policy and reconviction rates, while recognising the political context of prisons in Northern Ireland, the pressures brought about by the implementation of the Steele report, and the general need for the safe supervision of prisoners.”

way the European Convention on Human Rights has been incorporated into domestic law. In particular they have affected the manner in which the state investigates deaths by lethal force.

British Irish RIGHTS WATCH was dismayed by the House of Lords decision in McKerr (March 2004), in which we were third party interveners.¹²² The decision significantly limited the breadth of the Human Rights Act. The Lords held that the Human Rights Act, which came into force on 2nd October 2000, merely gave effect to European Convention rights in domestic law. Individuals, whose cases arose from incidents before the 2nd October 2000, could not exercise their Convention rights before the domestic courts. Furthermore, claims arising from the procedural rights stemming from Article 2, such as the right to an effective investigation, even if they arose after October 2000, could not engage Human Rights Act protection if the death happened before that date. This decision completely negated the effect of the earlier McKerr ruling of the European Court of Human Rights.¹²³ Moreover, the House of Lords' decision stands in stark contrast to two other cases– not connected to Northern Ireland - decided on the same day as the McKerr case. In these other cases the issue of retrospection was simply not raised and the Lords applied the Act without taking any point on the issue.

BIRW welcomed the decision made of the Court of Appeal in Commissioner of Police for the Metropolis v Christine Hurst.¹²⁴ The Court of Appeal upheld the principle, as set out in s.3 of the Human Rights Act 1998, that all legislation should be read and given effect in a manner compatible with the convention rights listed in the Act – regardless of when that legislation was enacted. The

¹²² Gervaise McKerr was killed by the RUC in 1982 along with two other men. No-one was convicted for his murder. Inquests into the deaths were abandoned. The European Court of Human Rights found in 2001 that the UK had violated Article 2 of ECHR in its failure to properly investigate McKerr's murder. McKerr's family was awarded compensation - citing the failure to carry out an effective investigation meant that the family must have "suffered feelings of frustration, distress and anxiety... which is not sufficiently compensated by the finding of a violation of the Convention." McKerr v. The United Kingdom, Judgment, [2001] ECHR 325, 4 May 2001, at para. 181. In May 2001, the Court also found violations of Article 2 by the United Kingdom due to lack of effective investigations in the Jordan case, the Kelly and others case, and the Shanaghan case. The Court awarded £10,000 to each of the victims' families affected.

¹²³ The UK's failure to implement the Court's ruling in McKerr, Jordan, Kelly and Shanaghan is still before the Council of Ministers.

¹²⁴ Troy Hurst was murdered by a mentally ill neighbour. An inquest was opened into his death, but adjourned because a man was charged, and eventually convicted of manslaughter. Mrs Hurst, Troy's mother, wanted the inquest to be re-opened to investigate the roles of Barnet Council, Barnet Health Authority and Metropolitan Police in her son's, murder. The Coroner declined on the principle that all the matters that could be ascertained at an inquest, had been addressed in the criminal trial, and this was compatible with Article 2, and the right to an investigation. The Divisional court disagreed that there had been compliance with Article 2.

repercussions for investigations into lethal force killings by the state, between 1988 and 2000 are viewed positively by BIRW.

The Council of Europe, Committee of Members, concluded in February 2005, that there was an "... obligation under the Convention to conduct an investigation that is effective 'in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances and to the identification and punishment of those responsible', and the Committee's consistent position that there is a continuing obligation to conduct such investigations inasmuch as procedural violations of Article 2 were found in these cases."¹²⁵ The implication of this conclusion is that the UK Government is now fully aware of its responsibilities to carry out investigations into unlawful deaths, in a manner compliant with Article 2.

British Irish RIGHTS WATCH requests that the Joint Committee ask the Government to set out the rationale for its position on effective investigations under Article 2 of the ECHR; and to outline what steps it is taking to provide investigations into all deaths irrespective of when they took place.

Inquests

BIRW welcomed, in 2003, the conclusions of the Luce Review into Death Certification and Investigation in England, Wales and Northern Ireland. The recommendations in the report clearly acknowledged the need for the inquest system in Northern Ireland to be substantially reformed. The system, as it stood, was in disarray, with the power of the coroner being extremely limited, and permitting only an examination of the direct cause of a person's death, rather than the circumstances surrounding their death.¹²⁶ This review, combined with

¹²⁵ Council of Europe, Committee of Ministers. *Interim Resolution ResDH (2005)20, Action of the Security Forces in Northern Ireland (Case of McKerr against the United Kingdom and five similar cases)*. Measures taken or envisaged to ensure compliance with the judgments of the European Court of Human Rights in the cases against the United Kingdom listed in Appendix III (Adopted by the Committee of Ministers on 23 February 2005 at the 914th meeting of the Ministers' Deputies)

¹²⁶ Inquests can only deliver findings on the identity of the deceased and how, when and where he or she died. Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, rule 22 (1). In *Re Bradley and Another's Application* [1995] NI 192, it was determined that "how" means "in what manner" rather than "in what broad circumstances." However, in a sign that the judicial position may be changing, on 10 September 2004, Nicholson LJ stated that he was prepared to accept that the word "how" should have a broader meaning so that a coroner could investigate the planning and carrying out of an operation by the security forces that led to the death of Pearse Jordan. See *In the matter of an application by Hugh Jordan for judicial review and in the matter of a decision taken by the Lord Chancellor and In the matter of an application*

judgments in Jordan, explored whether s. 3 of the Human Rights Act 1998, which says that so far as possible legislation must be read and given effect in a way which is compatible with Convention rights, means that, McKerr notwithstanding, inquests held after the Human Rights Act came into force should be conducted in a way that is compatible with Article 2.¹²⁷ Specifically, and following the judgment of the House of Lords in Middleton, the Court of Appeal has been grappling with the interpretation of the word “how” in relation to a death. Nicholson LJ, who gave the judgment in the Bradley case that “how” means “in what manner”, overturned himself in Jordan and said that he now believe that “how” should be interpreted as meaning “by what means and in what circumstances”. This judgment was given on 10th September 2004. On 14th January 2005, a differently constituted Court of Appeal, dealing with the issue of disclosure in McCaughey and Grew¹²⁸, held that s. 3 of the Human Rights Act 1998 did not apply to two deaths arising in 1990, and that the applicants were not entitled to an Article 2-compliant inquest.

BIRW remains consistently disappointed by the Government's failure to acknowledge and implement the Luce review recommendations. These recommendations included:

“22. The coroner should be given explicit powers to determine the scale and scope of his investigation; to obtain any document necessary to his investigation; and to enter premises.

23. The coroner should be given explicit powers to investigate any death on his own initiative whether or not it had been formally reported to him; and to investigate any group of deaths which have already been certified if, in retrospect, there are grounds to think there might have been common factors not previously identified.

27. Death investigations should so far as is necessary find the identity, time and place of death and medical cause of death; and examine the immediate circumstances in which the death was discovered, the events immediately leading up to the death, relevant circumstances and history of the deceased, the actions of other individuals where relevant, any management or regulatory systems relevant to the protection of the deceased, and the role of any relevant emergency services.”¹²⁹

by Hugh Jordan for judicial review and In the matter of a decision taken by the Coroner, 2004 NICA 30, 10 September 2004

¹²⁷ *In the matter of an application for judicial review by Hugh Jordan and in the matter of a decision made by the Lord Chancellor, and In the matter of an application for judicial review by Hugh Jordan and in the matter of a decision made by the Coroner, [2004] NICA 29 (1)*

¹²⁸ *Police Service of Northern Ireland and Owen McCaughey & Pat Grew, [2225] NICA 1*

¹²⁹ *Death Certification and Investigation in England, Wales and Northern Ireland: The Report of a Fundamental Review 2003, Cm 5831 [hereinafter Luce Report], Chapter 21*

Most pertinently, an absence of legislation on reforming the inquests system means that the inherent problems within the system remain. As a result of Government failure, inquests in Northern Ireland will continue to be ineffective, and fail to ensure compliance with the procedural obligations of Article 2 of the European Convention.¹³⁰ The rules governing inquests in Northern Ireland have been amended so that witnesses who may have been responsible for a particular death can be compelled to attend.¹³¹ This change, by itself, does not, however, go nearly far enough to meet the UK's obligations under Article 2.

We ask the Joint Committee to encourage the Government to outline its formal response to the Luce Review, and to indicate what changes will be made to the inquest system.

British Irish RIGHTS WATCH welcomes recent proposals by the Northern Ireland Court Service to modernise the coroner's service, which include making the office of the coroner a full-time post and improving the procedure for investigating deaths.¹³² However, we are concerned that the three year consultation process has caused the system to become effectively paralysed, with a huge backlog of cases and a flood of applications for judicial review of coroners' decisions.¹³³

We request the Joint Committee to ask the United Kingdom Government how it proposes to deal with the backlog of inquests in Northern Ireland and what changes it will introduce to ensure that inquests are Article 2 compliant.

Inquiries Act 2005

British Irish RIGHTS WATCH has long called for a system of effective inquiry into the use, and particularly the abuse, of lethal force in Northern Ireland. In May 2002, the UK and British Governments appointed a Canadian judge, to review six cases where collusion had been alleged. In Northern Ireland, these were the deaths of Patrick Finucane, Rosemary Nelson, Billy Wright and Robert Hamill. In April 2004, following the recommendations set out in Judge Cory's report, three public inquiries were announced. However, the Finucane Inquiry was effectively put on hold until the end of the criminal trial of Ken Barrett (found guilty in September 2004).¹³⁴ While the Nelson and Hamill inquiries were placed within the framework

¹³⁰ *Hugh Jordan v. The United Kingdom*, [2001] ECHR 323, 4 May 2001, at para. 130

¹³¹ *Coroners (Practice and Procedure) (Amendment) Rules (Northern Ireland) 2002*

¹³² *Modernising the Court Service*. 01.04.05.

http://www.courtsni.gov.uk/en-GB/Publications/Press_and_Media

¹³³ The Northern Ireland Court Service reported that at the end of 2003 a total of 1,392 cases were outstanding before Northern Ireland's coroners, not including figures for East Tyrone and Magherafelt, and Fermanagh and Omagh. See *Northern Ireland Court Service, Judicial Statistics 2003*, available at <http://www.courtsni.gov.uk>

¹³⁴ Patrick Finucane was a defence lawyer who was murdered in 1989. Since then credible allegations have emerged of collusion by the army, the police, the intelligence services and possibly even the government in his murder.

of the Police (Northern Ireland) Act 1998, and the Wright Inquiry within the Prison Act 1953, the Finucane Inquiry is set to fall under the new powers of the Inquiries Act 2005.

BIRW has made extensive submissions to the Government about the inadequacies of the Inquiries Act 2005. In particular, we are concerned by the removal and transfer of powers to control inquiries from independent chairs to government ministers. These powers include: the decision whether there should be an inquiry; its terms of reference; appointment of its members; public access; the withholding of costs should the inquiry move beyond its terms of reference and the publication of the final report. These issues have a direct impact on the independence of an inquiry, particularly if a minister has to look into the actions of his or her own department. Where Article 2 of the ECHR (right to life) comes into play, an Inquiry under this Act would not be compliant.

In relation to the Finucane case, Judge Cory himself has stated: "it seems to me that the proposed new Act would make a meaningful inquiry impossible". In cases as sensitive as the Finucane murder, the Inquiries Act operates as a direct block to any effective investigation to be carried out. In the first place, the Secretary of State for Northern Ireland will be the only person who can decide whether there should be an inquiry into the Finucane case at all (s. 1). He could, if he chooses, simply refuse to hold an inquiry. On the assumption that there is an inquiry, the Secretary of State will decide its terms of reference (s. 5). The only person he needs to consult about the terms of reference is the chair of the inquiry (s. 5 (4)), whom he appoints (s. 4). He need not consult the Finucane family, or Sir John Stevens, who conducted the police investigation, nor Judge Cory, who enquired into the case at the joint request of the British and Irish governments. The Secretary of State will appoint the inquiry's panel members (s.4). He must ensure that the panel has the necessary expertise (s. 8), but persons with a direct interest in the matter under inquiry, or a close association with an interested party, can be appointed so long as doing so could not "reasonably be regarded as affecting the impartiality of the inquiry panel" (s. 9). Once again, the Minister need not consult anyone about who to appoint to chair the inquiry, and need only consult the chair about the appointment of other panel members (s. 5 (4)). One of the minister's strongest powers is his ability to issue a restriction notice (s.19). Such a notice can determine whether all or part of the inquiry should be held in public. In theory, an inquiry could be held entirely behind closed doors. The Secretary of State has already said that much of any Finucane inquiry would have to be held in private. It is possible that the Finucane family themselves, and even their lawyers, would not be allowed to be present during some of the hearings. Nor would it be possible for independent human rights groups to send observers to closed sessions in order to place any inquiry under independent scrutiny. A restriction notice can also determine whether evidence placed before an inquiry can be disclosed or published. There is the possibility that many crucial documents relating to the Finucane case will not be made public on the grounds that they deal with sensitive intelligence matters. Finally, the Secretary of State will decide how much, if any, of the inquiry's final report will be made public (s. 25).

In a number of media interviews following his statement on 1st April 2004, the Secretary of State said that hearings in the Finucane case would have to be held mostly in private. On 1st April 2005, speaking at the United Nations Commission on Human Rights, the Irish Ambassador to the UN, HE Maire Whelan, was reported as having made the following statement:

“MARY WHELAN ([Ireland](#)) said the case of Pat Finucane, along with Rosemary Nelson's, had been addressed by the appropriate special procedure of the Commission. The Government had welcomed the publication of reports on the murders, and the announcement that public inquiries would be set up into the circumstances surrounding the murders, and these inquiries had now been established and had begun their initial investigations. The British Government had announced that an inquiry would be established on the basis of new legislation. While welcoming this, there was concern for the provisions of the legislation proposed.

Any inquiry into this case should be public to the degree possible, and any disputes about this should be independently arbitrated by the courts. Any such inquiry should also be independent of the Government. The Inquiries Bill would not allow for the required independence. The family of Pat Finucane and the community at large wanted the issue of collusion publicly and independently examined to establish the facts. However, the family, after battling for almost fifteen years, were now being asked to accept something that failed to fulfil the required criteria. They had made it clear they would not cooperate with an enquiry established under the Inquiries Bill. The Government of Ireland with regret asked again that the appropriate special procedure of the Commission continue to give attention to the case of Mr. Finucane.”

The United Kingdom exercised its right of reply:

“NICK THORNE ([United Kingdom](#)), speaking in a right of reply in response to the statement made by Ireland on the issue of the inquiry into the death of Pat Finucane, said the United Kingdom continued to believe that an inquiry held under the aegis of the new Inquiry Bill was the best way forward. The independent Canadian Judge who had overseen the investigation into allegations of collusion in the death of Pat Finucane said that the subsequent Inquiry should be held to the greatest extent possible in public, and this was what would happen. The new Bill did not allow anyone to withhold information from the Chair of the Inquiry. The Inquiry would have to be balanced with national security, and thus a large proportion of the Inquiry would probably have to be held in private.”

BIRW supports the Finucane family in their decision to boycott the inquiry. This case raises such serious issues concerning state collusion, that a public inquiry is the only possible way to satisfy the public interest issues it raises. We believe a public inquiry is the only mechanism by which justice can be achieved for Patrick Finucane.

We call on the Joint Committee to urge the Government to uphold its promises and to take immediate steps to establish an independent public inquiry into the murder of Patrick Finucane, which is Article 2 compliant.

The Inquiry into the murder of Billy Wright, though initiated under the Prison Act (Northern Ireland) 1953, is seeking conversion to an Inquiry under the Inquiries Act 2005.¹³⁵ We understand that the reason behind this, is a belief that the terms of the Prison Act are not sufficiently broad to allow the Inquiry to examine the conduct of all state authorities with regard to the murder of Billy Wright. Although Lord MacLean's opening statement contained an acknowledgement of the need for breadth of the terms of reference for the Inquiry and the assumption that issues of collusion will be addressed, BIRW is strongly opposed to any attempt to convert the Inquiry. Should it be converted, the Inquiry will lose all vestiges of independence because it will be open to the Secretary of State to, for example, redefine the terms of reference, replace the current panel and suppress evidence. Secondly, though Lord MacLean placed emphasis on the need for this inquiry to be public, BIRW is concerned that much of it will be held in private if it is converted. This latter element deprives both the Wright family, and the wider public in Northern Ireland, of the ability to hold state bodies to account.

We call on the Joint Committee to oppose the conversion of the Billy Wright Inquiry, and to ensure that any Inquiry convened is Article 2 compliant.

BIRW draws the Joint Committee's attention to the fundamental flaws within the Inquiries Act 2005, and calls on the Government to make amendments to the Act.

CHANGES TO POLICY AND THE "WAR ON TERROR"

Other issues we feel to be relevant to the Joint Committee's inquiry

As a result of the suicide bombings in London on 7 July 2005, and of global experiences of terrorism since 11 September 2001, a raft of legislative and administrative measures have been introduced in the United Kingdom. British Irish RIGHTS WATCH, while mindful of the need to protect national safety, is alarmed by the nature of many of these measures. The majority have appeared before in

¹³⁵ Billy Wright, an LVF member, was murdered on 27 December 1997 in the Maze prison. He was shot and killed in a prison van within prison grounds, by three members of INLA who were imprisoned in the same block.

Northern Ireland – where experience has shown that a curtailment of civil liberties contributes to the abuse of human rights, and is thus an entirely inappropriate and illegitimate method of combating terrorism. BIRW draws the Committee's attention to several of these measures which cause us concern.

- **Use of lethal force**
- **Changes to court procedures**
- **Minorities**

Use of lethal force

British Irish RIGHTS WATCH was extremely concerned at the introduction and implementation of Operation Kratos by the Metropolitan Police Force; and the subsequent death of Jean-Charles de Menezes in Stockwell underground station on 22 July 2005.¹³⁶ De Menezes, a Brazilian national, was trailed by security personnel from his home in Tulse Hill to Stockwell, under false suspicion of being a suicide bomber. He was followed into Stockwell station and onto a train, where he was restrained and shot seven times in the head.¹³⁷ While BIRW is mindful of the need to protect Londoners from suicide bombers, we are concerned about the implementation of a “shoot to kill” policy, and the clear operational and procedural problems which exist within Operation Kratos. The implementation of Operation Kratos raises serious questions especially in situations where there is room for error about the identity and intention of suspects. Significantly this policy does not appear to have undergone any consultative process nor been subject to Parliamentary debate, or Ministerial approval.¹³⁸ British Irish RIGHTS WATCH believe that changes in police policy, which have a direct bearing on the right to life, as outlined under the UK's international commitments to human rights, should be subject to a full Parliamentary review.

BIRW ask the Joint Committee to encourage the Government to seek a parliamentary review of the use of lethal force, and to pursue open and transparent disclosure on the subject.

British Irish RIGHTS WATCH is concerned that the “shoot to kill” policy is proving problematic within the police force itself. The Metropolitan Police Commissioner, Sir Ian Blair claims that it is the “least worst way of tackling suicide bombers.....I am not certain the tactic we have is the right tactic, but it is the best we have

¹³⁶ Operation Kratos is understood to be a policy introduced six months after the events of 9/11 which addresses the prevention of suicide bombings; work done with Israeli and Sri Lankan security forces indicated that shots should be fired at the head, rather than the area of critical mass (torso), to prevent detonation. Research carried out by the International Association of Chiefs of Police has indicated that if a warning is given to the suspect, then bombers often detonate their explosives. *IACP Training Key #581 Suicide Bombers Part I.* www.theiacp.org

¹³⁷ *Brazilian shot eight times.* BBC News. 25.08.05 and *New claims emerge over Menezes death.* The Guardian. 17.08.05

¹³⁸ *Anger over 'shoot to kill' policy grows.* The Guardian. 31.07.05

found so far."¹³⁹ His attitude seems to indicate an unfocussed policy – which is reactive and not proactive, with a potential for unlawful killings.¹⁴⁰ BIRW disputes Sir Ian Blair's claim that there is "nothing cavalier or capricious" about Operation Kratos; we feel that De Menezes' death proves that such a policy has unpredictable and dangerous results.¹⁴¹ There have been three previous incidents involving the use of lethal force, prior to the death of De Menezes, of which we are aware; all resulted in the deaths of unarmed men, none of whom represented a threat to national security at the times of their deaths. The deaths of Harry Stanley, Diarmuid O'Neill and Neil McConville all illustrate the tragic problems which can arise when faulty intelligence coincides with the use of lethal force.¹⁴²

The Israeli Defence Force, very experienced in dealing with suicide bombings, has a policy of shoot to kill when tackling suicide bombers. However, it has often managed to avoid using lethal force, by isolating the individual, training guns on the suspect, and then making the individual remove the 'bomb pack' themselves, or with the use of remotely controlled robots.¹⁴³ In this respect, a properly isolated suicide bomber is only a danger to his/herself, and the security services have had no need to use lethal force.

BIRW ask the Joint Committee to call upon the police to review their policy of using lethal force in suspected suicide bombing situations, in line with global best practice.

British Irish RIGHTS WATCH is concerned by media reports of the involvement of Special Forces soldiers in this incident.¹⁴⁴ In Northern Ireland, we have seen the problems of employing the army in civilian situations. In particular, the use of the 14 Int, an SAS unit, which was responsible for a number of killings in Northern Ireland that British Irish Rights Watch considers unlawful.¹⁴⁵ We are particularly

¹³⁹ *Death in Stockwell: the unanswered questions*. The Observer on Sunday, 14.08.05

¹⁴⁰ Sir Ian Blair, 'refuses to rule out other innocent people being shot in similar circumstances' Quoted in *Ibid*.

¹⁴¹ *Met chief tried to stop shooting inquiry*. The Guardian. 18.08.05

¹⁴² Harry Stanley was shot in 1999 in Hackney, East London, when the table leg he was carrying was mistaken for a sawn-off shot gun. Diarmuid O'Neill's death is addressed in more detail further on in this submission (footnote no. 144) He was shot and killed in Hammersmith hotel by police. Neil McConville was killed by police in Northern Ireland in April 2003, following a car chase.

¹⁴³ For example, where bombers are caught at checkpoints. Wafa al-Bis, a female 'would be' suicide bomber was intercepted at a checkpoint in the Gaza strip in June 2005. The security services isolated her and instructed to disarm herself (i.e. remove her suicide bomb belt). Once she had done so, she was arrested, and the explosives safely disposed of. *Haaretz Magazine*, 01.07.05. www.haaretz.com. See also Husam Abdu, a 14 year old 'would be' suicide bomber, who was intercepted in Nablus, West Bank in March 2004, and similarly disarmed.

¹⁴⁴ *Could this 'police officer' be a soldier?* The Times. 31.07.05

¹⁴⁵ In particular, British Irish Rights Watch would cite the cases of John Boyle killed in 1978 and Patrick Duffy, also killed in 1978

disquieted by allegations of army personnel wearing police uniforms when the status of the army in police operations is obscure.¹⁴⁶ The Ministry of Defence has confirmed that the army provided technical assistance in the Stockwell operation, but has claimed that army personnel were not directly involved in the shooting of De Menezes.¹⁴⁷ However, this is contradicted by a media report which states that a unit comprising Special Reconnaissance Regiment soldiers, was created in April to combat terrorism, and were present at the shooting.¹⁴⁸ We are worried by the blurring of boundaries between the military and police, and consider that the use of the military in such situations should be subject to close political supervision. We should like to have details of the agreement or authority that permits military involvement in police operations in London.

The use of the military in civilian situations, combined with the use of lethal force, has a direct impact upon accountability for such actions. Killings by lethal force carried out by the RUC in Northern Ireland are now subject to retrospective investigation by the Police Ombudsman's office and the PSNI's Historic Enquiries Team. In contrast, civilian deaths carried out by the army were, and are still not subject to the same level of scrutiny.¹⁴⁹

We urge the Joint Committee to encourage the Government to provide a transparent account of the relationship between the army and the police force. We would like assurances that if army personnel continue to be involved in police operations, at an operational level, they will be subject to the same standards of transparency and accountability currently applied to the police.

We would like to draw the Committee's attention to the case of Diarmuid O'Neill, a suspected member of an IRA Active Service Unit, who was shot by a London Metropolitan Police Officer on 23rd September 1996.¹⁵⁰ There are several

¹⁴⁶ *Police draw on lessons from Northern Ireland terror campaign.* Financial Times. 16.08.05

¹⁴⁷ *Could this 'police officer' be a soldier?* The Times. 31.07.05

¹⁴⁸ *Army deployed in London.* The Irish Post. 03.09.05

¹⁴⁹ Deaths caused by soldiers in Northern Ireland do come under the remit of the PSNI historic enquiries team. However, BIRW considers these investigations to be insufficiently independent because they are carried out by the police. See *McKerr vs. UK* (2001), where the European Court of Human Rights ruled that the police were too close to the army for an adequate investigation to be carried out.

¹⁵⁰ Diarmuid O'Neill, along with four other men, had been under extended surveillance for six weeks. Evidence, indicating that the suspects were unarmed, and had no access to weaponry in the hotel room in which they were living, was not passed on to the SO19 teams who carried out the final operation. The police used CS RIP gas to subdue the suspects, but were then themselves overcome by the fumes. Mr O'Neill was shot six times through the hotel door – the bugs planted by the surveillance team, indicated that he was not a threat – rather he was following the instructions issued to him by a member of the SO19 team. The first inquest into his death was prejudiced by the coroner's comments regarding the IRA and his choice not to direct the jury on the issue of Article 2

similarities with the shooting of De Menezes. Firstly, the Security Services failed to pass relevant information to the police team which carried out the operation, including the fact that O'Neill and his associates were unarmed. The level of force used was disproportionate to the threat posed by the men; and SO19 failed to issue a verbal warning before resorting to lethal force.¹⁵¹ Members of the police team in charge of the operation were emotionally charged – they had watched videos of the bombing of Canary Wharf beforehand.¹⁵² Finally, the police and media misled the public by the use of prejudicial language and false information. It would appear that the death of De Menezes took place under comparable circumstances – indicating that few lessons have been learned since Diarmuid O'Neill's death.

In addition to the case of Diarmuid O'Neill, mistakes have been made in two other shoot-to-kill incidents of which we are aware. Harry Stanley was shot dead by the police in 1999, after someone had told them there was an Irishman in a pub with a sawn-off shotgun in his bag – in fact, he was a Scot taking a wooden table leg for repair. Neil McConville, aged 21, was shot dead by police officers on the evening of 29th April 2003 on a country road in Northern Ireland. The police said that they opened fire because they feared he would run over an officer with his car, but media reports said that he had threatened to shoot a police officer. A gun was discovered in the well of the passenger's seat, but it was wrapped up in cloth and there was no ammunition in the gun or the car. It is doubtful whether Neil McConville's car was in a fit state to knock down a police officer.

Thus the recent history of shoot-to-kill operations seems to indicate that four unarmed men, who were posing no real threat at all, died when they could simply have been arrested. BIRW believe that such operations violate the right to life, and the adoption of a shoot-to-kill policy should be urgently reviewed in light of these incidents.

BIRW would like the Joint Committee to encourage the development of a system of “lessons learnt” in lethal force operations.

The role of faulty intelligence in De Menezes death is of particular worry to BIRW. Both in Northern Ireland and in the murder of Diarmuid O'Neill in London, BIRW has seen the negative and occasionally fatal implications of bad intelligence work. In the case of De Menezes, he left a multi-occupancy building, the

of the ECHR. A verdict of lawful killing was returned. *Death of Diarmuid O'Neill. Second Submission to the UN's Special Rapporteur on Extra-judicial, summary or arbitrary executions.* British Irish RIGHTS WATCH. 2001

¹⁵¹ Six shots were fired at Mr O'Neill, four of which were released in a single burst, contrary to SO19 guidelines. At the start of the raid, the police fired CS RIP rounds, which served to substantially disable both the suspects and the police. *Death of Diarmuid O'Neill. Second Submission to the United Nation's Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions.* British Irish RIGHTS WATCH. 2001

¹⁵² Concerns about IRA terrorists during this period is comparable to those currently held about al-Qaeda.

address of which was found in the belongings of one of the 7 July bombers; the surveillance officer on duty was unable to identify De Menezes as a suspect, as he was away from the camera at the time.¹⁵³ De Menezes was recorded as an “IC1” i.e. a Caucasian, and not of Afro-Caribbean or Asian origin as the alleged suspect was believed to be.¹⁵⁴ De Menezes walked from his home to a bus stop, and then boarded a bus to Stockwell. Leaked Independent Police Complaints Commission documents indicate: “The current strategy around the address was as follows: No subject coming out of the address would be allowed to run, and that an interception should take place as soon as possible away from the address ...”.¹⁵⁵ De Menezes was not intercepted at any point during his journey. Despite this operational breach, the surveillance officers concluded he warranted a code red tactic (i.e. use of lethal force) – this had occurred by the time he had left the bus twenty minutes later. BIRW is concerned by the speed with which this decision was taken, as well as the failure to properly identify De Menezes.¹⁵⁶ Reports have indicated that De Menezes, unaware of being followed, and wearing a light denim jacket, entered the tube normally, picked up a free paper, and boarded the escalator.¹⁵⁷ In contrast, guidelines on the identification of suicide bombers cite the following as identifying factors: wearing of heavy clothing, unusual gait, tunnel vision, bags or backpacks, evasive movements and signs of drug use.¹⁵⁸ None of those applied to De Menezes.

According to eyewitness statements, the first contact that De Menezes had with the police was when an unarmed, plain clothes officer restrained him in the tube carriage. The use of Operation Kratos tactics meant that where officers “were deployed to intercept a subject there was an opportunity to challenge, but if the subject was non-compliant, a critical shot may be taken.”¹⁵⁹ At no point did officers make any attempt to intercept or challenge De Menezes, or give De

¹⁵³ *New claims emerge over Menezes death*. The Guardian. 17.08.05. There are allegations that this officer was a soldier. Met chief tried to stop shooting inquiry. The Guardian. 18.08.05

¹⁵⁴ *Fatal mistakes that cost de Menezes his life*. The Guardian. 18.08.05

¹⁵⁵ *Leaks raise sharp questions about police tactics*. The Guardian. 17.08.05

¹⁵⁶ Surveillance officers claim: ‘During the course of this [bus journey], his description and demeanour was assessed and it was believed he matched the identity of one of the suspects wanted for terrorism offences ... the information was passed through the operations centre and Gold Command made the decision and gave appropriate instructions that de Menezes was to be prevented from entering the tube system. At this stage the operation moved to code red tactic, responsibility was handed over to CO19 [Scotland Yard firearms unit]. *Leaks raise sharp questions about police tactics*. The Guardian. 17.08.05

¹⁵⁷ *ITV claims to show ‘police blunders’ in Brazilian’s shooting*. The Independent. 17.08.05

¹⁵⁸ Paraphrased from *The Detection and Prevention of Suicide Bombings. Total Integrated Preparedness Solutions*. Vol. 1. No. 10. 18.05.05, quoted in IACP Training Key #581 Suicide Bombers Part I. www.theiacp.org

¹⁵⁹ Quoted in *Leaks raise sharp questions about police tactics*. The Guardian. 17.08.05

Menezes the opportunity to respond or comply with instructions. Despite being restrained, De Menezes was shot eight times or more.¹⁶⁰

BIRW would like clarity on the reason why an unarmed man, who had been physically restrained, was shot and killed, in a clear breach of operational guidelines and policy. We consider this a direct violation of the right to life.

Also of concern is the absence of functioning CCTV cameras in Stockwell station.¹⁶¹ London Underground has 6,000 CCTV cameras and Stockwell station has a number of cameras covering the following areas: ticket hall, exit, half the access areas (Routeways) and all the floor area of the platforms.¹⁶² London Underground also has CCTV in train carriages. Transport for London itself acknowledges "CCTV images that emerged after the July 7 bombings and the subsequent events that followed, have played a crucial part in police investigations."¹⁶³ It seems extraordinary and alarming that all the CCTV cameras in a tube station can be out of operation just 15 days after a major terrorist attack. There have been also been allegations that the CCTV was working, but that the tapes passed to the IPCC were blank.¹⁶⁴ Underground staff have denied this.¹⁶⁵ Any investigation into De Menezes death will hence have to rely on witness statements, some of which have changed several times since the event.¹⁶⁶

BIRW ask the Committee to encourage the Government to ensure that Transport for London has put in place all necessary and functioning measures to protect the public.

British Irish RIGHTS WATCH is concerned by the level of force used during this operation. As with the case of Diarmuid O'Neill, it would appear that an excessive number of rounds were fired. If one considers that De Menezes was restrained, the firing of eight or more shots in a contained public space, not only indicates a lack of control on the part of the armed officer, but considerable danger to the public. Also, the fact that officers delayed their intervention until after he had boarded a train might be decisive in causing a very serious loss of life.

BIRW urge the Joint Committee to task the Government to hold an independent review of the number of rounds fired in all incidents of lethal force, and to carry out an assessment of the risks involved for the public.

¹⁶⁰ Media reports differ on the number of bullets fired (between eight and eleven) *De Menezes family: 'give us the truth'*. (ITV. 17.08.05), indicates the use of eleven bullets.

¹⁶¹ *Death in Stockwell: the unanswered questions*. The Observer on Sunday, 14.08.05

¹⁶² *JNP Schedule – Appendix 11C*. www.tfl.gov.uk. (as on 02.08.05)

¹⁶³ *Eyes on London*. www.tfl.gov.uk (as on 02.08.05)

¹⁶⁴ *London death shows North policing problems not unique*. Sunday Journal. 28.08.05

¹⁶⁵ *Ibid.*

¹⁶⁶ *Death in Stockwell: the unanswered questions*. The Observer on Sunday. 14.08.05

While BIRW is encouraged by the referral of the case to the Independent Police Complaints Commission, we are very concerned by allegations that Sir Ian Blair argued instead for an internal inquiry into the incident, on the grounds of national security.¹⁶⁷ We are also concerned that the IPCC were not handed the papers until five days after the event, and that IPCC investigators were not allowed to enter Stockwell station for a further three days.¹⁶⁸ We believe this may have contributed to a loss of vital evidence.

Respect for human life does not depend on an individual's right to be in the UK. BIRW hopes that De Menezes' immigration status will not have an impact upon the Independent Police Complaints Commission's investigation. We have previously seen the effects of media and police misinterpretation with the death of Diarmuid O'Neill, who was erroneously described as being armed. By slurring characters and reputations, the police are often able to de-humanise individuals, and prejudice a fair investigation.

British Irish RIGHTS WATCH is not aware of any public inquiry into the death of De Menezes, and thus would like to add its voice to that of the De Menezes family in calling for one. Any inquiry must be Article 2 compliant – we do not consider an inquiry as defined by the Inquiries Act 2005 to be appropriate.

British Irish RIGHTS WATCH condemns any abuse of lethal force. We urge the Committee to recommend an urgent review of Operation Kratos and call for an end to the shoot to kill policy, on the grounds it is disproportionate and unnecessary. We also ask the Joint Committee to support the De Menezes family's call for an independent public inquiry.

Changes to court procedures

Prime Minister Blair's recently announced pre-trial process for those suspected of terrorist activity are a cause of great concern for British Irish RIGHTS WATCH.¹⁶⁹ The new process would allow 'secret' evidence to be examined before a juryless court to see if it justified the continued detention of an individual. The proposed courts are similar to Diplock courts used in Northern Ireland. Introduced in 1973 to ostensibly end intimidation of jurors by paramilitaries, Diplock courts sat without jurors and the standard for the admitting confession evidence was lower. The result was a high conviction rate yet numerous claims of miscarriages of justice. The lower standard of evidence and the absence of a jury directly contravenes the right to a fair trial, both of which are proposed with secret courts.

¹⁶⁷ *Met chief tried to stop shooting inquiry.* The Guardian. 18.08.05

¹⁶⁸ *Menezes probe team briefs family.* BBC News. 18.08.05

¹⁶⁹ Mr Blair announced on 5 August 2005 that the Government is investigating the introduction of new court procedures including a pre-trial process. Mr Blair also announced a desire to extend the detention time of suspects. These measures will only apply to those suspected of terrorist activities/involvement/incitement. *Prime Minister's Press Conference.* 05.08.05. www.number-10.gov.uk

The new courts will consider “secret evidence”, the nature of which will not be made available to the defendant. Media reports indicate that some of this evidence may include telephone taps (though this has yet to be officially confirmed).¹⁷⁰ BIRW is concerned that attempts to introduce such courts into the UK under emergency legislation are illegitimate and represent a gross undermining of human rights. BIRW is also disappointed that while Diplock Courts are being abolished in Northern Ireland under the repeal of emergency laws, the proposed new courts will be introduced in Northern Ireland.¹⁷¹

British Irish RIGHTS WATCH call on the Committee to protect the right to a fair trial, a right which would be denied under this proposed legislation.

Prime Minister Blair indicates a need to “increase the number of special judges hearing such cases”, understood to be those cases involving allegations of terrorism.

BIRW would like to see clarification of the meaning of “special judges” and reasoned consideration of their compatibility with the UK’s human rights commitments.

British Irish RIGHTS WATCH is concerned by media reports that indicate the Lord Chancellor wishes, through judicial changes, to give national security concerns the same weight in a court of law as a suspect’s human rights.¹⁷² We believe that any attempt to undermine judicial independence will have serious and irreversible effects on the viability of human rights in the UK.

BIRW would encourage the Committee to remind the Government of its human rights commitments in relation to the judiciary and to trials generally. In particular, BIRW would call attention to Article 6 (right to a fair trial) of the European Convention on Human Rights, and Articles 9 (right to liberty) and 14 (equality before the courts) of the International Covenant on Civil and Political Rights.

Minorities

British Irish RIGHTS WATCH is concerned about reports of possible police harassment of the Asian community – in a manner similar to that employed with the Irish community in Britain during the last three decades. Between 1974 and 1991, 7052 people were stopped and questioned, had their property searched, or were held by police under the Prevention of Terrorism Act (1974); of these, 86% were released without charge.¹⁷³ The impact was to drive the Irish community inwards, and aid in the recruitment of IRA terrorists. For British Asians, statistics indicate that between September 2001 and December 2004, 701 individuals were arrested under the Anti-Terrorism Crime and Security Act 2001, of whom

¹⁷⁰ *Secret Terror courts considered.* BBC News 09.08.05

¹⁷¹ *Ulster to get secret courts.* Belfast Telegraph. 10.8.05

¹⁷² *Judges face human rights shake-up.* BBC News. 12.08.05

¹⁷³ *We did it to the Irish first.* The New Statesman. 08.08.05

only 119 were charged and 19 convicted; the majority of those arrested were Muslim Asians.¹⁷⁴

Stop and search statistics indicated that there are almost twice as many searches of Asian people as of white people.¹⁷⁵ There has been a 15% increase in the number of Asians stopped under a new policy, introduced after 7 July by police forces in the South East, which no longer requires officers to give a reason for their searches.¹⁷⁶ We were concerned by the remarks of Chief Constable Johnston of the British Transport Police, who said: "Intelligence-led stop and searches have got to be the way ... We should not waste time searching old white ladies. It is going to be disproportionate. It is going to be young men, not exclusively, but it may be disproportionate when it comes to ethnic groups".¹⁷⁷ We object to any kind of racial profiling in stop and search procedure – we believe this simply forces terrorists to use different methods, and alienates communities.

British Irish RIGHTS WATCH ask the Committee to consider the impact that discriminatory policing can have on minority communities, and make recommendations accordingly.

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¹⁷⁴ Question and Answer: Terror laws explained. BBC News. 25.01.05

¹⁷⁵ Government and police must engage communities to build a fairer criminal justice system. Press release. 02.07.04. www.homeoffice.gov.uk

¹⁷⁶ Police to get stop and search powers. BBC News. 19.07.05

¹⁷⁷ Asian men targeted in stop and search. The Guardian. 17.08.05