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## **A briefing on the legislative measures proposed by the United Kingdom Government in the aftermath of the Omagh bombing**

Prepared by Amnesty International, the Committee on the Administration of Justice (CAJ), British Irish Rights Watch, Liberty and Human Rights Watch.

Amnesty International, the Committee on the Administration of Justice (CAJ), British Irish Rights Watch, Liberty and Human Rights Watch are deeply concerned about the threat to respect for human rights posed by the legislative measures which both the United Kingdom and Irish governments are proposing in the wake of the tragic loss of life in the last few weeks as a result of the Omagh bombing.

It is undoubtedly incumbent upon governments to take steps to protect society from criminal acts and to bring those responsible to justice in the course of proceedings which meet international standards of fairness. Measures taken in the immediate wake of atrocities are rarely effective in achieving this goal. History has shown that they frequently lead to miscarriages of justice and undermining public confidence in the rule of law.

Uncharacteristically this briefing note on the UK government's proposals has been written without sight of the Bill to be introduced to the recalled sitting of Parliament on 2nd and 3rd September. This is due to the fact that the bill has not yet been published. The lack of adequate discussion about the proposals before their consideration by parliament is itself a cause for alarm. We have prepared this briefing as a reflection of the seriousness of our concerns and our desire to ensure that these preliminary comments are available in advance of your consideration of these measures. The briefing is based primarily on the announcement made by the Prime Minister in Omagh on 25th August.

Amnesty International, the Committee on the Administration of Justice (CAJ), British Irish Rights Watch, Liberty and Human Rights Watch believe that proposals for new legislation in the wake of the Omagh atrocity are not only "draconian" but, if enacted, will violate the government's human rights obligations under international law. Furthermore the organisations believe that the proposals, if enacted would conflict with the soon to be enacted Human Rights Act.

### **Proposals to facilitate conviction for membership of specified organizations:**

**violations of the right to be presumed innocent, the right not to be compelled to incriminate oneself and the right to silence:**

We understand that the key proposal aims to relax the rules of evidence to make it easier to obtain convictions for membership of proscribed organisations. It is proposed that the opinion of a senior RUC officer will form the basis for prosecutions on such a charge. Inferences of guilt drawn from a suspect's silence in the face of questioning on membership or other matters will be used to corroborate the evidence of the police officer. This may mean that if a suspect is being questioned about membership and freely speaks to the police, but then refuses to answer questions in relation to allegations that s/he engaged in an armed robbery, that refusal can be used to corroborate police evidence that the suspect is a member.

Additionally it appears that refusal to co-operate with "any relevant inquiry" will be sufficient to corroborate the RUC evidence. It is almost impossible to limit the circumstances in which this wording could be used. It is blank cheque to the RUC.

We believe that these proposals are contrary to the right to be presumed innocent until proven guilty beyond a reasonable doubt, as recognised in Article 14 (2) of the International Covenant on Civil and Political Rights (ICCPR) and Article 6 (2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention). These proposals would also violate the right not to be compelled to testify against oneself or to confess guilt, as guaranteed by Article 14 (3) of the ICCPR.

Full respect of the right to silence, is so fundamental that only a few weeks ago 120 states, including the UK, voted for the establishment of an international criminal court which would guarantee this right to persons suspected or accused of the worst crimes in the world: genocide, other crimes against humanity and war crimes. Similarly, the Rules of Procedure and Evidence of the International Tribunals for the former Yugoslavia and for Rwanda guarantee this fundamental right to persons suspected or accused of these crimes.

In further striking at the right to remain silent the government's current proposals unacceptably shift the burden of proof from the prosecution to the accused and they violate the right not to be compelled to incriminate oneself. This is unacceptable and could lead to the conviction of innocent persons.

In July 1995, the United Nations Human Rights Committee, (the body of experts which monitors the implementation of the ICCPR, concluded that "the provisions of the Criminal Justice and Public Order Act of 1994, which extended the legislation originally applicable in Northern Ireland, whereby inferences may be drawn from the silence of persons accused of crimes, violates various provisions in article 14 of the [ICCPR], despite the range of safeguards built into the legislation and the rules enacted thereunder." The Committee recommended that the UK bring its legislation into conformity with the Covenant.

Similarly, the European Court of Human Rights in its February 1996 judgment in *Murray v. UK* concluded that these provisions, coupled with the restrictions on access to legal advice, violated the European Convention.

The European Court of Human Rights also stated that future judgments on cases involving adverse inferences being drawn from silence would depend on all of the circumstances of the case, "having particular regard to the situations where inferences may be drawn from silence, the weight attached to them by the national courts in their assessment of the evidence and the degree of compulsion inherent in the situation." (*Murray v UK 1996*)

The aim of the new proposals is to impose such a degree of compulsion on suspects that they are forced to answer questions put to them by the police. This could lead to situations where there is a considerable degree of compulsion on a person detained or charged, where the only evidence proffered is the suspicion of the police, and where the courts will attach significant weight to the inference drawn from the suspect's silence. In these circumstances we are concerned that the provisions will violate the ICCPR, the European Convention and the Human Rights Act.

The government has as yet failed to implement the necessary changes to legislation in order to comply with the conclusions of the Human Rights Committee and the ruling of the European Court of Human Rights and in this context the current proposals are set to cause further problems.

**Conspiracy to commit Terrorist Offences Abroad:  
violations of the rights to freedom of expression and association:**

We understand that the legislation you will be asked to vote on may also criminalise conspiracy to commit terrorist offences abroad. While we fully support the need to take measures to prevent atrocities such as those which have recently occurred, such measures must also be taken within the framework of respect for internationally protected human rights.

We are concerned not only that such legislation be drafted in such a manner as to set out a recognisable criminal offence, with a clear definition of terrorist offences and specification of acts which would constitute conspiracy, but also that the provisions clearly not violate international law, including solemn treaty commitments of the United Kingdom under Articles 19 and 22 of the International Covenant on Civil and Political Rights and Articles 10 and 11 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, guaranteeing rights to freedom of expression and association.

Although Articles 10 and 11 of the European Convention permit state parties to limit the exercise of these freedoms when such limitations are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, such limitations must be narrowly construed so that they limit the exercise of these fundamental rights to the minimum extent necessary and for the shortest time possible. Similar limitations clauses in Articles 19 and 22 of the International Covenant on Civil and Political Rights must also be narrowly construed to ensure that the essence of these fundamental rights is not violated in the name of such nebulous concepts as national security, territorial integrity and public safety.

We urge you to resist making hasty decisions on an issue which was to have been the subject of a study and white paper- which to date have not yet been produced. A precipitous decision to restrict fundamental rights which are essential to the enjoyment of other rights could lead among other things to imprisonment of persons as prisoners of conscience solely on the ground of their beliefs, ethnic origin, colour, language, national or social origin, birth or other status.

**Evidence by Informers and from Telephone Taps:  
cause of previous dispute, violations of the rights to fair trial and privacy:**

We are also concerned about "other matters" which may be placed before you including the use of evidence given by informers and possibly that obtained by telephone tapping.

It is important to remember that the whole criminal justice system in Northern Ireland was brought into international disrepute by the use of informer evidence in the "supergrass" trials of the 1980s. To revisit that era would be a disaster when we are now trying to establish justice mechanisms that will command the respect and confidence of the entire community.

We believe that the use of technical surveillance devices should be reviewed with the aim of providing a single regulatory system based on Article 8 of the European Convention on Human Rights which guarantees the right to privacy and which will soon be part of UK law. To rush through such far-reaching powers in this Bill would be a recipe for disaster.

**CONCLUSION:**

The Good Friday Agreement, in its commitment to human rights, recognised that past human rights abuses have been part of the problem and have exacerbated the conflict. Indeed, the Agreement looked to the early removal of emergency powers. The proposals being placed before you by the government represent the antithesis of this approach. The governments of the UK and Ireland have publicly recognised that the intention of those who planted the bomb at Omagh was to undermine the search for peace and the Agreement. That must not be allowed to happen. A future for all the people of Ireland, underpinned by the human rights protections of the Agreement and international standards, is too precious a prize to risk by repeating the mistakes of the past.

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