Committee on the Administration of Justice

(affiliate of the International Federation of Human Rights)

Submission to the United Nations Committee Against Torture

for consideration during the Committee's scrutiny of UK Government's Report

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The Committee on the Administration of Justice (CAJ) is an independent civil liberties organisation committed to working for the highest standards in the administration of justice in Northern Ireland. Founded in 1981, CAJ is a sister organisation of the Irish Council for Civil Liberties (ICCL), Liberty (formerly NCCL) and the Scottish Council for Civil Liberties (SCCL). Along with Liberty and SCCL, CAJ is part of the UK Human Rights Panel of the International Federation of Human Rights.

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Ill-treatment of persons detained under emergency legislation in Northern Ireland

This submission to the UN Committee against Torture highlights the concerns of the Committee on the Administration of Justice (CAJ) concerning the treatment of detainees held under emergency legislation in "holding centres" in Northern Ireland. The submission details the legislation covering detention. It details the allegations of ill-treatment which the CAJ has received between May and September of 1991. These allegations are given under the headings of verbal abuse, threats, physical abuse, comments about police doctors and other complaints.

A critique of the legal regime seeks to demonstrate the inadequacy of its safeguards. It shows why CAJ believes that the UK government has not fulfilled its obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to take adequate steps to protect detainees in "holding centres" particularly Castlereagh Police Office.

The submission addresses the UK government's report and suggests that it is at the very least disingenuous. Finally, CAJ's recommendations for stronger safeguards are listed for consideration.

1. Background to Concerns about Treatment of Detainees in Police Custody in Northern Ireland

Over the past twenty years there have been frequent complaints regarding the treatment of people detained in custody in Northern Ireland. Some of these have concerned sentenced prisoners, notably around the time of hunger strikes at the Maze prison in 1980-1. The great majority however have concerned the treatment of people during police interrogation. It is with this issue that our submission is also concerned. Such concerns first surfaced in 1971, immediately after the introduction in Northern Ireland of detention without trial. In 1977 the European Commission of Human Rights in the case of **Ireland v United Kingdom** concluded that such complaints were justified and that physical mistreatment of suspects, through beatings and the use of sensory deprivation techniques, had attained sufficient severity to be regarded as torture. The following year the European Court of Human Rights upheld the complaints as amounting to inhuman and degrading treatment, though not attaining the severity required for a finding of torture.

However scarcely had this judgement been given than there was an alarming rise in complaints about police interrogation practices and an Amnesty International Mission to Northern Ireland in 1978 concluded that there were serious problems with the procedures for interrogations in Northern Ireland. In 1979 a government appointed inquiry by Judge Bennett acknowledged the need for reforms to prevent mistreatment and advocated a number of measures, notably more regular medical examination and the introduction of close circuit cameras to monitor investigations. These have since been implemented.

Yet despite these reforms complaints about treatment in custody continued in the 1980's and have intensified recently. In the 1988 Amnesty International reported three cases of people who had been ill treated. In June 1991, Amnesty International's report into human rights concerns in the UK documented 20 cases of ill-treatment covering the last three years. Also in 1991, Amnesty issued its first Urgent Action relating to Northern Ireland concerning the detention of a person in police custody. Finally, in October 1991, the Helsinki Watch published a comprehensive report into human rights in Northern Ireland. It documented further allegations of ill-treatment during detention.

The Committee on the Administration of Justice (CAJ) has been receiving an increasing number of complaints regarding mistreatment in custody in recent years. This submission details the legislation governing detention, and the allegations of ill-treatment that we have received. It goes on to show why CAJ believes that the UK government has not fulfilled its obligations under the Convention Against Torture to take adequate steps to protect detainees from the danger of torture, cruel, inhuman or degrading treatment. The UK government's report is addressed and finally, recommendations for stronger safeguards to protect detainees are listed.

2. Legal Background to Detention and Interrogation

Any summary of the legal provisions relating to detention and interrogation in Northern Ireland needs to stress that there are two legal regimes in operation. One, relating to "normal" criminal justice is largely contained in the **Police and Criminal Evidence (Northern Ireland) Order 1989** (PACE). The second, which relates to "emergency" criminal justice is contained primarily in the **Northern Ireland (Emergency Provisions) Act 1991** (EPA)and the **Prevention of Terrorism Act 1989** (PTA). The United Kingdom has periodically entered derogations to the **Civil and Political Rights Covenant** and to the **European Convention on Human Rights** as a result of its emergency legislation. Currently the only derogation in force is that relating to the permitted length of detention in police custody before being brought before a judicial officer under Section 14 of the PTA. This summary highlights distinctions between the two regimes.

The initiation of intervention against suspected criminal activity is arrest. Under PACE, the power to arrest without a warrant can only take place where someone is suspected of having committed an "arrestable offence" (one that carries a penalty of five years or more imprisonment on conviction) or certain specific offences designated by law. Under Section 14(1)(b) of the PTA a police officer may arrest someone if they have reasonable grounds for suspecting them to be "concerned in the commission, preparation or instigation of acts of terrorism to which this section applies". "Terrorism" is defined by Section 66 of the EPA as "the use of violence for political ends". The European Court of Human Rights, in **Brogan v United Kingdom**, described the concept of arresting someone on suspicion of involvement in terrorism as "well in keeping with the notion of an offence". However it still does not require suspicion of any particular offence for a lawful arrest to take place.

Once arrested a person may be detained under the Police and Criminal Evidence Order for a maximum of 36 hours before being brought before a magistrate. A magistrate may authorise detention for up to another 60 hours if there are reasonable grounds for believing this is necessary to secure evidence. Reviews of detention must be carried out every nine hours by a police officer of the rank of inspector or above and a person must be released once it is clear that their detention is no longer necessary. A person arrested under the PTA may be detained for a total of seven days (see 4a of this submission).

Detention conditions and interrogation procedures under PACE are regulated by a number of Codes of Practice. These cover things like access to legal and medical advice, the length of interrogation sessions, when breaks for food should take place. These are not applicable to people detained under the PTA in Northern Ireland though they are to PTA arrests in Britain. The government has however published a guide to the exercise of the emergency powers. This has no statutory force however and judges are not even required to take account of it in decisions on false imprisonment or the admissibility of statements. The government has recently announced its intention to introduce a code of practice to replace the guide (see 4a of this submission).

Section 45 of the EPA contains a right of access to a lawyer, but this may be delayed for up to 48 hours (see 4b of this submission). A detainee also has the right to have someone informed of their arrest under Section 44 of the same Act but this may also be curtailed (see 4c of this submission). Detainees can see the police doctor at a pre-arranged time if they wish but there is no right to be examined by one's own doctor (see 4d of this submission). Interrogations under the PTA are supposed to be observed via a close circuit camera by a police officer not involved in

the interrogation. Court cases have revealed that this does not always take place (see 4f of this submission).

Before interrogation detainees are cautioned that they do not have to say anything but that inferences may be drawn from their silence. If a person is subsequently prosecuted on the basis of a statement made to the police the rules on its admissibility differ sharply for those tried under emergency legislation (see 4e of this submission).

If someone alleges ill-treatment in detention there are a number of steps they can take. One is to seek **habeas corpus.** This is available to secure their release from detention which will become unlawful if excessive force is used. It has no remedial aspect and is unavailable once released. However, deferral of access to a solicitor means that this possibility is restricted as no proceedings can be started until a solicitor has been instructed. A second step is to seek damages in civil court for assault and/or false imprisonment. Some solicitors report that their clients only receive damages if they agree not to publicise their case. Finally, a complaint can be made to the **Independent Commission for Police Complaints** (see 4h of this submission).

3. Summary of Allegations of ill-treatment in Castlereagh Holding Centre

The following details allegations which CAJ has received from detainees themselves or their relatives arising out of some 28 periods of detention ranging from 1 to 7 days. The arrests all took place between May and September 1991. One of those interviewed had no serious complaint to make. A number of others had no allegations of physical abuse. In addition to the cases we have documented, we have noted press reports of further allegations of ill-treatment covering some 20 to 25 periods of detention. We have had meetings with the Northern Ireland Office (the UK government's headquarters in Northern Ireland), the Police Authority and the Independent Commission for Police Complaints to raise our concerns and press for the introduction of safeguards to protect detainees under emergency legislation. It is a matter of deep regret and serious concern to us that the Chief Constable of the RUC (the Northern Ireland police force) has refused on two occasions to meet with us to discuss these allegations. We also note that he has refused access to the holding centre to a member of parliament and a member of the House of Lords.

On the basis of the experience of meeting those involved and studying the allegations they make, CAJ is satisfied that there is serious cause for concern about the situation in Castlereagh. We have medical evidence in relation to a number of the cases. In other cases, the treatment involved would be of a nature not to leave marks identifiable by doctors. However, despite the lack of corroborating evidence, CAJ is satisfied that the lack of safeguards makes the regime governing detention open to abuse and fails to provide adequate protection against ill-treatment.

A. Verbal Abuse

There were a disturbingly high number of allegations of verbal abuse - 20 in all. Six people alleged that disparaging and degrading remarks were used. Eleven people spoke of prolonged

shouting sessions, one case involving a man in his late 60s. These involved for example being called "murdering bastard", "murdering bitch", or sectarian abuse. It is alleged that the detectives made allegations about people's private and sexual life, including comments about people's looks. In one case, a woman alleges that her miscarriage the previous year was cast up at her: "it's the evil in you that caused the miscarriage". In another case, a woman was told she was "a sleeping bag" for the Provisional IRA (the major nationalist paramilitary group).

B. Threats

There were 48 allegations of verbal threats, or threatening behaviour. Six people reported that they were threatened with physical abuse or being beaten up or the detectives saying that they could beat them up and leave no marks. A further two people alleged that a tactic was to pretend to punch them stopping at the last minute and hovering behind them threateningly. One woman alleged that threats were made that she would be electrocuted.

It is alleged that threats were made to arrest other local people or to arrest or charge other members of the detainee's family. One person claims he was threatened with being re-arrested continually. Three people claim they were told that there was pressure from "the top" (i.e. senior officers or politicians) to get convictions. Five people alleged that the detectives said they would manufacture forensic and other evidence to secure convictions. Another four claim that they were threatened or actually framed by false "verbal" confessions. Four people claimed that detectives stated that they were implicated in offences by other people though no charges resulted. One person alleged that the detectives weren't particularly interested in whether a conviction was finally secured. The point was to have people on remand, in jail and off the street. Another person claims that the detectives threatened to hold them for the full seven days if they did not co-operate. Two people claimed that the police suggested the 1988 provisions on the right to silence (see page 9) meant they could secure a conviction merely by the fact that the detainee remained silent.

One person claimed that detectives had threatened to have the word put about that they had become an informer. (Informers are regularly killed by paramilitary groups in Northern Ireland.) Two women claimed that detectives had threatened to have their children put into care. One person claimed that detectives held a lit cigarette lighter towards his pubic hair.

The most serious allegations concerned death threats. 13 allegations were made concerning assassination either of the detainee or members of their families. On five occasions these referred to assassination by the SAS (an undercover regiment of the British Army); on two occasions to the RUC; on four occasions to loyalists (members of the Protestant paramilitaries in Northern Ireland who have been involved in killings of Catholics). One man alleged that he was taken out of the interview room and confronted by another man who, he was told, was a loyalist and would remember his face. A disturbing allegation was made by one person about "a wee man in the Northern Ireland Office" who only had to lift the phone to arrange assassinations by the SAS.

C. Physical abuse

The allegations that give rise to the greatest concern relate to the type and level of physical abuse. Whereas there have been ongoing allegations of physical abuse through the '80s, the number of allegations and the intensity of abuse seem to have increased markedly this year. Many detainees emphasised that the detectives conducting the interviews boasted that they knew how to inflict abuse and leave no visible marks. The kind of alleged abuse ranges from the odd slap or

punch to allegations of much more serious and sophisticated ill-treatment. Five people also alleged that the interrogation involved specific sexual harassment and abuse.

Five people alleged that they were slapped repeatedly on the face, while one person added that her mouth and chin were squeezed for long periods. One of the most common allegations concerned repeated hitting with the base or flat of the hand or the knuckles on the side, top or front of the head for up to fifteen minutes on one occasion. Twelve people described this technique, which involved no marks as it was kept above the hairline and rarely involved heavy blows. Three people allege that they were poked or jabbed on the temple or in the ribs. On one occasion this involved prolonged pressure on the temples.

It was alleged that, on a number of occasions prolonged pressure was exerted on various parts of the anatomy. One example was standing behind the detainee and pressing down on the shoulders. Two people alleged that their heads were forced round so that they were looking at the interrogator. Three people alleged that their head was forced down between the legs. On one of these occasions, it is claimed, a detective sat on the head and bounced up and down. One young man says that his head was pulled back over the chair-upright for a prolonged period. Two people say that they were held against the wall by the throat until they nearly passed out. Half-choking with hands or an armlock was alleged by 5 people. Six people said pressure was applied to their genitals by feet or hands, in one case causing internal bleeding to the penis.

Heavy punching, mostly to stomach but also to arms, thighs, chest and head was alleged by nine people. Two women allege they were punched by a male detective. Two allegations were made of kicking. One man said he was hit by an elbow across his face on a number of occasions. Three people allege that objects were thrown at them including chairs and a bullet. Four detainees said that they were thrown against the wall. A further three said they were forcibly pulled out of the chair on which they were sitting.

Various forms of ill-treatment involving limbs were described to us. Four people say they were made to stand for long periods, on one occasion with legs bent and hands behind the head. Two people allege their arm was twisted behind their back with pressure also to the hand. Finger bending has been a recurrent feature in cases of compensation or of confessions being thrown out of court. The most serious allegation involved a being chair placed over one man's chest while he was lying on the ground. The detective then sat on the chair and pulled the man's arms while the detective's foot was placed on the detainee's genitals.

Ill-treatment involving more than one detective was alleged on a number of occasions. Two people, one man and one woman say they were lifted bodily and then held upside down. In neither case did this last for long but they both said that it had an extremely disturbing effect on them. The man says that he was dropped onto the floor. One man says that he was lifted from and dropped back onto the chair. A further two people say that they were pushed back and forth on the chair by two detectives.

Three people allege that hair was pulled out of their scalp, beard or chest. One man alleges that he suffered cigarette contact to the face. The contact was fleeting but definite. Two people allege that their ears were pulled. On one of these occasions two out of four stitches were pulled from a previous wound causing bleeding. One woman, who had a plaster cast on her arm for an injury to her wrist, alleges that her arm was attacked so severely that the plaster cast was broken.

D. Comments made about the Castlereagh doctors

Three people said that they found the police doctors evasive and unhelpful. Two cases involved the doctors ordering a specific regime of interviews which was not followed. Three people implied that the interrogators were getting information about complaints that they had made to the doctors. There were allegations that confidential medical information, supplied to the police doctors by the detainees' own doctors, was being used during the course of the interrogation.

E. Miscellaneous complaints

In six cases of young people being detained it was alleged that the experience of being in Castlereagh was akin to brainwashing. On two occasions this involved sleep deprivation. One woman said that she had been referred to a psychiatrist who had defined her as having symptoms akin to a victim of rape. Three people claim that they were told by detectives that something had happened to a relative. One person says that detectives told her that her mother had died. Another person claims detectives handed him a note purportedly from his mother urging him to confess. Two of those interviewed claimed that the detectives smelt of alcohol during the interviews.

On four occasions disparaging or threatening comments were allegedly made about the detainee's solicitor. One of these occasions involved references to the Belfast solicitor, Pat Finucane, who was murdered by loyalists amid allegations of police/army collusion. It is alleged that detectives said that the same would happen to this detainee's solicitor.

4. Critique of Legal Regime governing Emergency Detainees

If ill-treatment in custody is to be eliminated in Northern Ireland, or at least reduced, the structural weakness in the legal regime governing emergency detainees which have facilitated ill-treatment in the past must be tackled. Eight major weaknesses can be identified:

- a. The seven-day detention power
- b. Inadequate access to solicitors
- c. Inadequate provisions governing notification of arrest
- d. Inadequate access to doctors
- e. The rules on the admissibility of confessions and the attack on the right to silence
- f. The absence of video or audio recording of interrogations
- g. Inapplicability of the lay visitors scheme
- h. Inadequacy of investigation of complaints against the police.

A. The Seven-day detention power

A person arrested under s.14 of the PTA may be held for an initial period of 48 hours by the police. This may be extended for up to a further 5 days on application to the Secretary of State for Northern Ireland before they need be brought before a judge. Applications for extension of detention have been refused in less than 1% of cases. Reviews of detention must be carried out every 12 hours by a police officer. Total detention may therefore be for a period of seven days. In **Brogan v UK** the European Court of Human Rights ruled that detention under the PTA for even four days and six hours was in breach of article 5(3) of the European Convention on Human Rights. Rather than comply with the court ruling, the Government entered a derogation under article 15 and kept the seven-day power in place. The validity of the derogation will be challenged in a number of actions being brought in Strasbourg. In any case, measures taken under a derogation must be 'strictly required by the exigencies of the situation' and must therefore be proportionate to the goals in question. One of the issues which the European Court and Commission of Human Rights have looked at in assessing such proportionality has been the question of safeguards. Thus safeguards relating to PTA detainees should be especially strong rather than exceptionally weak as they are at present.

There can be little doubt that the seven-day power has contributed significantly to an atmosphere favourable to ill-treatment. The detainee is placed in the total control of the police and contact with the outside world becomes impossible except through minimal contact with a solicitor (see below). The effect is compounded by the design of the interrogation centres which create an intimidating atmosphere.

Partly in answer to these kinds of criticisms, the Government in July 1990 issued a 'Guide to the Emergency Powers' which sets out certain (non-binding) rules for the treatment of detainees. Further as a result of an amendment in EPA 1991 it has announced that it intends to re-cast some elements in the 'Guide' into a statutory 'Code of Practice' on the treatment of detainees. The Guide however, has proved to be quite ineffective, since the recent spate of serious allegations of ill-treatment have all occurred when its provisions were in place. Many believe that the creation of such Codes and Guides amounts to no more than a cosmetic exercise designed to create the illusion of change. They do not provide a solution - instead the seven-day detention power in the PTA, should be scrapped, and the law brought into line with European standards.

B. Provisions governing access to solicitors

Under s.45 EPA 1991 detainees' access to lawyers can be deferred for up to 48 hours. For this to happen, a police officer above the rank of superintendent must believe that allowing access would: interfere with the gathering of evidence; alert someone thereby making their apprehension in connection with an act of terrorism more difficult; or make it more difficult to prevent an act of terrorism. As well as the power to delay access, even where an interview is permitted, an RUC Assistant Chief Constable may insist that uniformed RUC members listen in on the consultation. The power to refuse access is widely used - in the first quarter of 1991 for instance, 57% of requests for access were denied. Furthermore, the position in England and Wales is that detainees have a right to have their solicitors present during interrogation. The same position should apply in Northern Ireland.

Monitoring of the condition of detainees by independent persons is crucial in preventing ill-treatment. The detainee's own lawyer has a particularly important role to play in this respect since he or she is someone whom the detainee should feel they can confide in without risk of re-

taliation. In order to fulfil this function it is vitally important that access be freely available and that consultations be in private.

In addition, these EPA provisions run contrary to the 'UN Basic Principles on the Role of Lawyers' adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in 1990 and supported in General Assembly resolutions 45/121 of 14 December 1990 and 45/166 of 18 December 1990. In particular, attention is drawn to paragraph 8 which provides: *"All arrested detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials'.*

The EPA provisions hinder access to lawyers, can remove privacy, and are in conflict with the Principles. They therefore contribute to an environment which facilitates ill-treatment and should be scrapped, and replaced with provisions giving detainees an unfettered right of access to their legal advisors in private.

C. The provisions governing notification of arrest

Section 44 of the EPA permits an RUC Superintendent to refuse a detainee the right to have someone informed of his/her detention for up to 48 hours. The grounds for refusal are the same as those relating to access to solicitors (see above). In effect a person can 'disappear' for up to two days. In a recent case for instance, CAJ was contacted after attempts by family members and a solicitor to trace a person who was believed to have been arrested were met with a wall of silence from the RUC. Eventually, following contacts with a Northern Ireland Office official, the location of detention was confirmed.

The power to hold people incommunicado is being increasingly used. In 1988 for instance, only 6% of requests to inform someone of arrest were refused, whereas in the first quarter of 1991 the figure had risen to 39%. It is a prerequisite for intervention calculated to prevent ill-treatment that a person be known to be in detention, and that the location at which he/she is being held be available. Unless such information can be obtained, arranging access by a lawyer or a doctor, or bringing **habeas corpus** actions becomes impossible. Section 44 is therefore a particularly invidious provision. It should be scrapped, and replaced with provisions giving an unfettered right to detainees to have a relative or friend informed of their arrest.

D. Access to Doctors

Detainees' doctors are given no statutory right of access to their patients held under emergency legislation, though detainees are examined regularly by police surgeons. The practice of the RUC in relation to access seems to vary. In one recent case, CAJ, having received reports that a detainee was being ill-treated, contacted the interrogation centre in question and received confirmation that the detainee's doctor would be permitted to see his patient. After he had obtained access, and following consultation with a police surgeon, the Doctor swore an affidavit in which he stated his belief that the detainee had been severely ill-treated. A **habeas corpus** action was then commenced, but before it could be brought to a conclusion, the detainee was released. The case serves as a pointed reminder of the utility of independent medical examination. It is not enough to permit access only to police surgeons since there may be practical difficulties in arranging for them to testify at **habeas corpus** hearings. As a means of combating ill-treat-

ment if would therefore be advisable to grant the detainee an unfettered right to consult with his own doctor.

E. The rules on the admissibility of confessions and the attack on the right to silence

Trials for certain "terrorist-style" offences are conducted in single-judge jury-less Diplock courts. This significant reduction from ordinary process is further qualified inasmuch as the ordinary rules on the admissibility of confessions do not apply. Instead, section 11 of the EPA allows any written or oral statement by the accused to be admitted as evidence provided that the defence does not bring forward **prima facie** evidence to show that the accused was subjected to 'torture, to inhuman or degrading treatment, or to any violence or threat of violence in order to induce him to make the statement'. If the defence does raise such evidence, then the prosecution must disprove it beyond reasonable doubt. There is also a judicial discretion (under s. 11) to exclude a confession where 'it appears appropriate to do so in order to avoid unfairness to the accused or otherwise in the interests of justice'.

In practice only the clearest evidence of misconduct by the RUC has resulted in statements being ruled inadmissible. This has led to an atmosphere in which more 'robust' interrogation practices have been seen as acceptable by the police, ultimately leading to severe ill-treatment of detainees in some cases. The extent of police reliance on confessions can be gauged from the fact that approximately 90% of cases brought in the Diplock courts rely solely or mainly on confession evidence.

The overall thrust has been to tend to force the prisoner to incriminate himself contrary to article 14 (3)(g) of the UN Covenant of Civil and Political Rights. This effect has been compounded by the attack on the right to silence contained in the **Criminal Evidence (Northern Ireland) Order 1988.** This allows inferences to be drawn from defendants' silence if they fail to account for any marks on their clothing or their presence at a particular place or if they choose not to give evidence at their trial. Thus a detainee may be forced to choose between speaking and possibly incriminating himself or herself in relation to some offence or other, or remaining silent, in which case his or her silence could help secure a conviction.

As the compound effect of s. 11 of the EPA and the 1988 Order amounts to a breach of the Covenant, and as their effect has been to create an atmosphere conducive to ill-treatment, they should be abolished at once.

F. The absence of video or audio recording of interrogations

One easy way to resolve the unending disputes surrounding interrogation centres would be to introduce video and audio recording of all interviews. A police force which conducts questioning properly could be expected to welcome the chance to clear its name. The continuing refusal to allow recordings only adds suspicion that there is something to hide. Little technical innovation would be required since video cameras are already in place (though no recordings are made, nor is sound transmitted). The Government's **Standing Advisory Commission on Human Rights** has accepted the case for video recording (though not for audio records). Lord Colville, the official reviewer of emergency legislation has also recommended that silent video tapes be kept, suggesting, in addition that experiments be conducted into audio recording summaries of interviews with 'suspected terrorists'. Finally, the government appointed **Independent Commission for Police Complaints** has also called for video-recording.

The Government's argument is that suspects might be less willing to volunteer 'off the record' information if they feel that this might come out in open court. However, anyone talking 'off the record' already faces the risk that written police records of what was said might get into the wrong hands, while the only persons likely to bring the tape into the public forum are the suspects themselves when challenging the admissibility of confessions. Amnesty International, Helsinki Watch, and the Government's own reviewers of emergency legislation have been unconvinced by the Government's arguments.

If there is a genuine wish to eliminate ill-treatment, then the introduction of audio and video recording would be a very useful step in the right direction. If this step is not taken, the 'message' which goes out may be one of toleration by those in authority of abuse of detainees.

G. Adequate lay visitors scheme

The treatment of non-emergency detainees in Northern Ireland police stations is now monitored under a lay visitors scheme. This is an arrangement whereby members of the public appointed to the task carry out spot checks on police stations. A very useful external check on police practice has therefore been introduced. Unfortunately, this does not extend to emergency detainees.

The government appears to have disregarded the views of the Police Authority for Northern Ireland who have called for the extension of the lay visitors scheme. Instead, it has announced its intention to appoint a Commissioner to oversee the treatment of emergency detainees, but this can be no substitute for independent scrutiny. Review by a person connected with the state security apparatus could not inspire confidence. If there is a real willingness to tackle ill-treatment of emergency detainees, the lay visitors scheme should be extended to cover them too.

H. Independent investigation of complaints against the police

At present, where a complaint is made alleging wrong-doing by members of the RUC, that complaint is investigated by a member of the police, usually from the Complaints and Discipline Branch, known as an 'Investigating Officer'. In effect, the RUC investigates itself. In some cases, the Government-appointed **Independent Commission for Police Complaints** supervises the investigation, but crucially, it does not itself actually investigate. The effectiveness of this system can be gauged from the fact that of the hundreds of allegations of ill-treatment in interrogation centres over the past three years, not one single complaint has been upheld. This is despite the fact that compensation for assault inflicted during interrogation has been paid in civil actions against the police, that **habeas corpus** actions have resulted in the release of detainees because of their ill-treatment by the RUC, and that confessions have in some cases been ruled inadmissible because of police misconduct. The failure of the complaints mechanism has therefore been a crucial factor in encouraging an atmosphere of toleration of ill-treatment, since it appears that complaints will not result in any remedy.

The only solution is a complete re-structuring of the complaints mechanism, in which complaints against members of the RUC will be investigated by persons from outside the force. This must be combined with other remedial action such as video and audio recording of interviews, if the complaints procedure is to provide a meaningful check on police abuses.

5. Response to the UK Government's Report

The UK government's report does not make it clear that in Northern Ireland the police have much greater powers when dealing with "terrorist" suspects than when dealing with other suspects and that persons arrested under the emergency laws are detained in one of three "holding centres" where the regime differs substantially from that in ordinary police stations. It should be pointed out that the existence of holding centres has no force of law but are merely catered for by police guidelines. The report should have provided details of these differences and explained how they affect a detainee's ability to prove that he or she has been ill-treated. For instance, it omits to mention that "terrorist" suspects can be denied access to solicitors for longer periods, and on wider grounds, than non-"terrorist" suspects.

- **Article 2**

Paras. 13-17, dealing with Article 2 of the Convention, do not say what effective **administrative** measures have been taken to prevent torture. The CAJ knows that persons complaining of ill-treatment often feel that their complaints are not listened to, that investigations are incomplete and that evidence is suppressed.

- **Article 10**

In **paras. 59-63** the UK government has provided no evidence to prove that training programmes "fully include" the matters required. **Para. 61** claims that there has not been an identified instance of torture in any UK establishment, yet in 1976 the European Commission of Human Rights found that torture **had** been used in the detention centre at Holywood, Co. Down. At a later date the European Court of Human Rights held the mistreatment to be inhuman and degrading, not torture, but one distinguished author has commented that "[i]t is not easy to understand the basis of the Court's disagreement with the Commission" [N.Rodley, **The Treatment of Prisoners under International Law**, Clarendon Press, Oxford and UNESCO, 1987, p.84]. **Para.62** does not say whether police medical officers are given any special training in detecting signs of physical or mental abuse of detainees, nor whether they are at liberty to divulge confidential medical information to interviewing officers. The CAJ is concerned at reports which suggest that complaints made to a medical officer can rebound to the disadvantage of a detainee. There have also been reports of doctors appearing uninterested in complaints of ill-treatment.

- **Article 11**

Para. 66 refers in passing to a difference in Northern Ireland concerning the taking of intimate body samples. It does not spell out what the difference means in practice, which is that mouth swabs may be taken forcibly from a detainee in Northern Ireland but only with his or her consent in England and Wales. **Para. 67** refers to a campaign of violence and "terrorism" connected with the affairs of Northern Ireland, yet Article 2 (2) of the Convention states that "No exceptional circumstances whatsoever... may be invoked as a justification of torture". **Para. 68** labels the anti-terrorist laws in the UK as temporary and emergency, but in fact they have existed since the early 1970s and have been frequently extended, most recently by an Act in 1991. The reference to Parliamentary scrutiny fails to mention that some of the recommendations of the government-appointed reviewer of interrogation rules (Lord Colville) have not been implemented by the government, despite their obvious relevance to the prevention of torture (e.g. his proposal that interrogation sessions should be video-recorded). **Paras. 71-73** do not point

out that the changes to the law on the right to silence affect **all** persons charged in Northern Ireland, not just terrorist suspects.

- **Article 12**

Paras. 76-96 do not refer to the system for dealing with allegations that persons **in police custody** have been tortured. The CAJ believes this system to be inadequate because the body which is the alleged torturer is also the body which investigates the allegations.

- **Article 13**

Paras. 97-106 do not explain the position regarding prisoners and mental health patients in Northern Ireland. As regards detainees in police custody (**para.105** cross-referring to **paras. 140 and 155-156**) no proper justification for the deficiencies in the system for dealing with complaints is given. The most alarming feature of the system is the incredibly low rate of substantiation of complaints made by persons arrested under the emergency laws: in 1988, 1989 and 1990 **not one of the allegations of assault was substantiated.**

- **Article 15**

Para. 110 omits to mention that the law in Northern Ireland does not expressly exclude the use of evidence obtained through **cruel** treatment. It talks only of torture, inhuman or degrading treatment, or violence or the threat of violence.

- **Article 16**

Para. 127 claims that the UK Government has put in place measures designed to prevent ill-treatment by persons acting in a public capacity. This is not borne out in Northern Ireland, where very few prosecutions have been brought against members of the security forces who have killed people. Also, according to the **Guardian** newspaper not one officer from Castlereagh has been disciplined since the outbreak of conflict in Northern Ireland in 1969.

Remedial Action

- ☐ 1. Section 14 of the Prevention of Terrorism Act 1989 which provides for seven day detention should be scrapped and the law brought into line with European standards.

- ☐ 2. Detainees should have an unfettered statutory right to consult in private with their legal advisers. Furthermore, detainees should have the right to have their solicitors present during the interrogation.

- ☐ 3. Detainees should have an unfettered right to have a relative or friend informed of their arrest.

- ☐ 4. Detainees should have an unfettered right to consult in private with their own doctor.

- ☐ 5. Section 11 of the Emergency Provisions Act 1991 which permits confessions to be admissible in evidence when they might otherwise be thrown out should be scrapped, as should the Criminal Evidence (Northern Ireland) Order 1988 which severely abrogates the right to silence.

- ☐ 6. Video and audio recording of interviews should be introduced.

- ☐ 7. The lay visitors scheme should be extended to cover emergency detainees.

- ☐ 8. The police complaints mechanism should be restructured so that complaints against the RUC are investigated by personnel from outside the force.

- ☐ 9. There should be a public inquiry into allegations of ill-treatment of emergency detainees since the most recent derogation was entered, with powers to examine individual cases.