Committee on the Administration of Justice

(Northern Ireland affiliate of the International Federation of Human Rights)

Submission to the United Nations Committee Against Torture

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The Committee on the Administration of Justice
45-47 Donegall Street
Belfast BT1 2FG
Northern Ireland
Tel : 44 1232 232394
Fax : 44 1232 333522

About the Committee on the Administration of Justice.

Established in 1981, the Committee on the Administration of Justice (CAJ) is an independent non-governmental organisation affiliated to the International Federation of Human Rights(IFHR). CAJ monitors the operation of the legal system in Northern Ireland and seeks to ensure compliance with international human rights standards. CAJ takes no position on the constitutional status of Northern Ireland and is opposed to the use of political violence.

CAJ has, since 1991, made submissions to the **Commission on Human Rights**, the **Sub-Commission on the Prevention of Discrimination and the Protection of Minorities**, the **UN Human Rights Committee**, the **UN Committee Against Torture**, the **UN Committee on the Rights of the Child**, the **UN Committee on the Elimination of Racial Discrimination** the **UN Special Rapporteur on extrajudicial, summary and arbitrary executions**, the **UN Special Rapporteur on impunity**, the **European Court of Human Rights** and the **European Committee on the Prevention of Torture.**

CAJ works closely with other national and international NGOs such as Amnesty International, the Lawyers Committee for Human Rights and Human Rights Watch.

CAJ's activities include: publication of human rights information; conducting research and holding conferences; lobbying politicians; individual casework and legal advice. CAJ's areas of interest include: policing; emergency laws; use of lethal force by security forces; children and young person's rights; prisons; gender equality, racism and discrimination; advocacy for a Bill of Rights. CAJ has a cross-community membership which includes of lawyers, academics, community workers, trade unionists and interested individuals.

INTRODUCTION

The major development in Northern Ireland since the Committee Against Torture's last consideration of the UK government's adherence to the Convention Against Torture has been the announcement of cease-fires by the main paramilitary organisations in Northern Ireland. This has given an unprecedented opportunity to resolve the long-standing conflict and move to a new era of peace and justice. CAJ believes that a lasting peace will only be found if human rights are respected and that the Committee Against Torture's consideration of the government's record can play a part in this process.

Despite the change in circumstances in Northern Ireland, there has been little change in the legal regime here. **Paragraph 44** of the government's report asserts that "terrorism, from whichever extreme it comes" is dealt with "through the normal process of justice". In this regard, CAJ points to what is the still routine use of emergency legislation in Northern Ireland (Prevention of Terrorism (Temporary Provisions) Act 1989 (PTA) and Northern Ireland (Emergency Provisions) Act 1991 (EPA)). Resort to such measures cannot be described as "the normal process of justice". Indeed, the extent of this legislation is such that it necessitates continuing derogations from the International Covenant on Civil and Political Rights and the European Convention on Human Rights.

The UN Human Rights Committee recently recognised that the continuation of emergency legislation in Northern Ireland presented a difficulty "affecting the full implementation of the Covenant" and stated that "the powers under the provisions permitting infringements of civil liberties, such as extended periods of detention without charge or access to legal advisors...are excessive." The Committee further recognised that "in the context of the elaboration of a peace settlement for Northern Ireland...further steps [should] be taken so as to permit the early withdrawal of the derogation made pursuant to Article 4 [of the ICCPR] and to dismantle the apparatus of laws infringing civil liberties which were designed for periods of emergency."

CAJ is concerned that despite the UK government's "working assumption" of a permanent cease-fire, and 14 months of "peace" in Northern Ireland, the government still sees the need for this extreme legislation and the associated lack of effective safeguards against the abuse of detainees. The renewal of the emergency legislation in1995 and the stated intention to renew in 1996 has come as a great disappointment.

In 1991 the Committee was critical of the UK government's implementation of the Convention Against Torture in Northern Ireland. These comments had a dramatic effect on the number of complaints received in relation to serious physical ill-treatment during interrogation. However, although the number of complaints of physical abuse decreased, we continue to be aware of allegations of ill-treatment. This has included the use of low-level physical force such as repeated slaps and also psychological ill-treatment such as the abuse of and theats to detainees and their legal advisors.

Complaints relating to the interrogation of detainees prompted the European Committee on the Prevention of Torture to make an ad-hoc visit to Northern Ireland in 1993. The Committee's subsequent report was also critical of the regime and the lack of adequate safeguards for those who are detained under the emergency

legislation. The Committee recognised that "acts of ill-treatment by law enforcement officials...are both grave violations of human rights and fundamentally flawed methods of obtaining reliable evidence for combatting crime."

The second major issue which we address in this submission is the treatment of a small number of Irish prisoners who are being held in English prisons. We are concerned that the conditions in which they are being held amount to inhuman and degrading treatment.

Given the national and international concern which has been consistently expressed about the human rights dimension to the Northern Ireland conflict it is CAJ's profound and respectful hope that the Committee Against Torture will contribute to the development of peace in Northern Ireland by pressing the UK government to meet its commitments under the Convention Against Torture and by calling for :

- The repeal of emergency legislation which limits the rights of detainees and leaves them vulnerable to ill-treatment, including;
  - an end to extended detention periods and the closure of interrogation centres
  - the right to have lawyers present during all interrogations
  - the introduction of audio and video recording of interviews
- The restoration of the right to silence
- The introduction of truly independent mechanisms for investigating complaints against the police
- The transfer of prisoners in England to prisons nearer their homes to serve out the remainder of their sentences.

Comments on the Second Periodic Report by the Government of Great Britain and Northern Ireland to the Committee Against Torture.

The main section of our submission provides a commentary on the UK government's report to the Committee Against Torture. Paragraph numbers refer to the paragraphs in the government's report.

ARTICLE 2

Para. 9
Under Article 2, States parties should provide the Committee with information on the legislative, administrative and judicial measures they have taken to prevent torture from occurring and indicate the effectiveness of these measures in preventing torture.

In its report the government only refers to the Criminal Justice Act 1988, the Offences Against the Person Act 1861, and the Geneva Conventions Act 1957. It is CAJ's view that the measures taken by the government under Article 2 are inadequate. While the government has argued that the de jure situation meets its obligations under the Convention Against Torture, CAJ contends that in fact the situation falls far short of it. This contention will be further explored during the course of this submission.

ARTICLE 10 EDUCATION AND TRAINING

Para. 29 - 32
Convention Against Torture guidelines state that education and information on the prohibition of torture must constitute an integral part of the training of civil, military and medical personnel, and that reports should provide detailed information on training programmes and discuss their effectiveness.

Paragraphs 30-32 of the government's report discuss the arrangements for the relevant personnel in England and Wales. Unfortunately, the position in Northern Ireland is not mentioned. Despite requests, CAJ has been unable to receive information from the Northern Ireland authorities about their provision for human rights education in these areas. In particular, no response was received when a request was made for information in the wake of the Committee's examination of the government's initial report in 1991. Thus the nature, extent and effectiveness of training under Article 10 is unknown.

Given the concern expressed by Committee members during the hearing of the UK's initial report, CAJ urges the Committee to request such information in order that the current postion of the government in relation to its obligations in respect of Northern Ireland under Article 10 might be evaluated.

ARTICLE 11 INTERROGATION AND CUSTODY

Para. 33 - 89
The wide and most important subject matter of Article 11 calls for an equally wide discussion and consideration of the rights guaranteed thereunder. This section of our submission deals with:

(1) the situation which exists in the police offices or holding centres which are used for the interrogation of suspects detained under the emergency legislation in Northern Ireland and

(2) worrying developments in the treatment of Irish prisoners convicted of "terrorist" offences and held in prisons in England.

CAJ has many concerns about the actions of the government and authorities in relation to their Article 11 obligations. CAJ does not believe that the promised review of the legislation in this area is enough and submits that the end of the "emergency" in Northern Ireland should also mean an end to emergency law here. It remains our view that the "interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment" do not adequately protect detainees from physical and psychological abuse.

(1) INTERROGATION

Conditions in Holding Centres

Arrests under the emergency legislation in Northern Ireland are usually carried out under section 14 of the PTA. A suspect may then be brought for questioning to one of the holding centres in Northern Ireland. These are: Castlereagh Holding Centre, Belfast and Gough Barracks, Armagh.

These centres are, typically, intimidating places. Legal sources have described them as uncomfortably cold and dreary. In the legal consultation rooms the decor is stark, with furniture attached to the floors and unshaded bright lighting. Conditions in the Holding Centres were particularly noted and criticised by the European Committee for the Prevention of Torture (ECPT) during its visit to Northern Ireland in 1993. The visit by the ECPT to Northern Ireland was prompted by allegations it had received of the ill-treatment of detainees in the holding centres here. As mentioned in the introduction this was not one of the periodic visits carried out under the European Convention on the Prevention of Torture but an ad hoc visit which the Committee felt was "required in the circumstances". In its subsequent report to the UK government, the ECPT stated that "the existing material conditions at Castlereagh Holding Centre render it inappropriate as a place in which to detain persons". Gough Barracks was considered superior but "conditions of detention were still far from good".

In its conclusions the ECPT was "confident that means could be found of providing access to natural light to detainees without compromising legitimate security needs". The report also criticised the lack of exercise facilities available to detainees - "the delegation was told by police officers that there were no facilities for exercise - either

outdoor or indoor - for persons detained at Castlereagh. This is another serious shortcoming in an establishment in which persons can be held for up to seven days."

Other critics have included Sir Louis Blom-Cooper, the government appointed Commissioner for the Holding Centres. He has said "It is not tolerable that the Holding Centre at Castlereagh should remain in commission any longer than is absolutely necessary."

The government, in its response to the ECPT's report, admitted that conditions in the holding centre at Castlereagh are unacceptable. Noting this, the UN Human Rights Committee recently expressed concern at the continued use of the facilities at Castlereagh for detention and urged that the holding centre be closed "as a matter of urgency". The government has as yet failed to implement this recommendation.

While it is submitted that such conditions of detention can, in themselves, amount to inhuman and degrading treatment or punishment as prohibited under CAT, CAJ also submits that this problem is exacerbated by the provisions for the detention of suspects. These are such that a favourable climate for the ill-treatment of detainees is created, contrary to Article 11.

Ill-treatment of detainees in holding centres.

During its examination of the government's initial report the Committee Against Torture noted a marked difference between the regime in England, Wales and Scotland and that of Northern Ireland in respect of the detention for questioning of persons suspected of involvement in "terrorism". Those differences persist.

As stated in the introduction to this submission, the impact of the Committee Against Torture's opinions on the UK's initial report was a welcome reduction in allegations of serious physical ill-treatment in the holding centres. However, CAJ has pointed out that the instances of psychological ill-treatment have since increased. Amnesty International has also recognised this phenomenon in their 1995 Summary of Human Rights Concerns in the UK.

Even in the wake of the cease-fires, CAJ continues to be aware of complaints from detainees. These complaints include:

- Personal abuse and denigration including insults and abusive remarks
- Coercive tactics, such as threats to self, family and friends.
- Environmental tactics such as deprivation of sleep, lengthy interviews and inadequate toilet and washing facilities.
- Confusion tactics such as shouting accusations and changing modes of questioning between pleasant and aggressive.
- Slaps and blows to the body

Much of this could be described as psychological abuse and, as such, it is much more difficult to prove than physical ill-treatment. More detailed information on the range of complaints being made is contained in the British Irish Rights Watch

submission. CAJ has long argued for the introduction of video and audio recording of interviews to provide an independent and objective record and indeed the Committee Against Torture saw video recording as a logical and necessary solution to the problem in 1991. Unfortunately the police and government have persistently resisted this change.

The ECPT noted on its visit to Northern Ireland that " a substantial proportion of the persons detained for offences related to terrorism with whom the delegation spoke, alleged that they had been ill-treated by the security forces at the time of their arrest and/or during their detention at the holding centres." In its conclusions the Committee further stated that it had been "led to conclude that persons arrested in Northern Ireland under the PTA run a significant risk of psychological forms of ill-treatment during their detention at the holding centres and that, on occasion, resort may be had by detective officers to forms of physical ill-treatment."

The government has outlined the safeguards it has put in place to counter the threat of torture and ill-treatment in these situations at paragraphs 47-59 of its report. These are examined below and in our view do not adequately protect detainees from psychological or physical abuse.

Para 47
(i)Codes of Practice

While CAJ welcomes the placing of these Codes on a statutory footing we take the view that the level of protection afforded by them is seriously inadequate. CAJ believes that because emergency detainees can be held for particularly long periods they are especially in need of adequate safeguards against abuse. It is paradoxical therefore that the protection offered in the codes is lower than that provided by the codes enacted pursuant to the Police and Criminal Evidence (PACE) Order which applies to "ordinary" crime. The provision is all the more invidious in view of the fact that the PACE codes apply to PTA detainees in Britain.

It is vital that the law in Northen Ireland protects persons arrested and detained for questioning. We do not believe that the placing of the codes on a statutory basis resolves the fundamental problem in the Holding Centres. We urge the government to consider allowing lawyers to be present during interviews and the introduction of audio and video recording as further and more effective safeguards for detainees and indeed the police.

Para 48 - 51
(ii)Medical Treatment

CAJ urges the Committee to request information on the training given to medical officers at the holding centres in relation to the prevention and detection of torture and ill-treatment. We have, in the past, received complaints from detainees about the adequacy and suitability of medical treatment in the Holding Centres and the attitudes of some of the medical officers.

Under section 9 of the Codes of Practice referred to above, access to the detainee's own doctor may be delayed for up to 48 hours but not for longer than is necessary. The government asserts that the power of delay in this case has not been used in recent years. CAJ points to this as an indication that the power is not needed and

calls for its repeal. We are also of the view that detainees should be able to consult their own doctor in private without the presence of the medical officer.

Para 52
(iii)Access to outside contact and legal advice

The dangers associated with incommunicado detention are widely acknowledged. As the government has pointed out in its report, the detainee's right to have someone else informed of his/her whereabouts may be delayed for up to 48 hours from the time of arrest under section 44 of the Emergency Provisions Act 1991. This is also the case with the right of access to legal advice under section 45 of the Act. The effect of these provisions is that a person can disappear from circulation, with his or her relatives only learning two days later that he or she has been arrested.

CAJ submits that the provision for access to legal advice does not meet with international standards. The right to consult a solicitor in such cases is a fundamental right and should not be suspended. The principle is especially important to those who find themselves in the unfamiliar and intimidating environment of a police interrogation room and during the first period of detention. The provisions as they stand run counter to the UN Basic Principles on the Role of Lawyers, particularly paragraph eight which provides that "all arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate with a lawyer without delay, interruption or censorship and in full confidentiality."

It must be pointed out that under the EPA police officers can be present during a detainee's consultations with his/her legal adviser. As well as this, under the emergency law in Northern Ireland, a lawyer cannot be present during the questioning of his/her client, unlike in Britain. CAJ sees no justification for such inequality of treatment and we believe this incursion into the lawyer/client relationship to be a serious breach of the right of access to legal advice

Para 56 - 58
(v)Closed Circuit Television Monitoring

The government has described the arrangements for the use of closed circuit television monitoring in the holding centres in paragraphs 56 - 58. We understand that the nature of this method of observation is one person observing a large bank of television screens. CAJ has often submitted that closed circuit television monitoring in such a situation can only be effective when coupled with a sound relay and the audio and video recording of interviews. The government's Standing Advisory Commission on Human Rights has also accepted the need for the video recording of interviews.

In its report, the ECPT recognised that the system of using closed circuit TV monitoring was "better than no system at all, but the bank of screens makes it difficult to concentrate." It concluded that the system is "not a foolproof means of detecting physical ill-treatment of persons detained at the holding centres or of preventing unjustified allegations of physical ill-treatment." Naturally the system can be seen as of little or no use where allegations of psychological ill-treatment are involved.

Other critics of the present system have included Sir Louis Blom-Cooper, appointed by the government as Commissioner for the Holding Centres, and John Rowe QC who has been the independent reviewer of the emergency legislation here. Sir Louis Blom-Cooper has said that interviews in the centres "cannot be monitored without some more direct surveillance than through the CCTV" and John Rowe has called for the introduction of audio recording.

Para 59
<u>(vi)Independent Commissioner for the Holding Centres</u>

While CAJ welcomes the appointment of the Commissioner for the Holding Centres it must be pointed out that his remit is somewhat limited. The Commissioner has himself noted in his second report that the conclusions to which the government refers at paragraph 59 of its report relate only to the "gaoler function of the Holding Centres".

CAJ would submit that the more worrying aspects of the regime in the holding centres arise in the context of the conduct of interrogations there. Sir Louis Blom-Cooper stated in his second report that his "lack of access to the process of interrogation, save for the limited exercise of observing multiple interviews through the medium of soundless CCTV monitors in the Duty Inspector's Room, precluded...[his] making any observation of the propriety of interviews."

A relatively recent development has meant that the Commissioner may be present at interviews but only with the prior consent of the detainee. This is a welcome development for the small number of detainees it will affect. It must be pointed out, however, that the Commissioner cannot be there all the time and this procedure is no substitute for the implementation of the audio and video recording of interviews.

Para 61 - 65
<u>Right of Silence</u>

When the government introduced the changes to the right to silence in Northern Ireland in 1988, it was claimed that the measure was necessary because "terrorists" were trained in anti-interrogation techniques. Nonetheless, the changes related to both emergency and ordinary detainees and now apply to the whole of the UK. This is despite the reservations expressed by national and international human rights organisations. The UN Human Rights Committee recently stated that "the provisions...which extended the legislation originally applicable to Northern Ireland, whereby inferences may be drawn from the silence of persons accused of crimes, violate various provisions in article 14 of the [ICCPR], despite the range of safeguards built into the legislation and the rules enacted thereunder."

Legal judgments by the Northern Ireland judiciary have shown that wider and wider inferences are being drawn from silence. A defendant, by his or her silence, potentially strengthens the prosecution case, giving rise to a real infringement of the privilege against self-incrimination and the presumption of innocence. There is a sense in which silence is being used to bolster a prosecution case which otherwise would not reach the requisite standard of proof beyond reasonable doubt.

In its examination of the government's initial report, the Committee Against Torture considered the restrictions on the right to silence in Northern Ireland and found that, with the restrictions on the right of access to a lawyer the position is very worrying.

This is a concern which was recently echoed by the European Commission of Human Rights in its opinion in the case of **Murray v UK.**

Murray v. UK

Mr Murray was arrested in January 1990 pursuant to section 14 of the Prevention of Terrorism (Temporary Provisions) Act 1989 and brought to Castlereagh Holding Centre. There his access to a solicitor was delayed for 48 hours. Mr Murray was interviewed 12 times on the 8-9 January 1990 but remained silent throughout. He continued his silence after consulting with his solicitor.

At his trail for conspiracy to murder, aiding and abetting false imprisonment and membership of a proscribed organisation Mr Murray was found guilty. At both first instance and on appeal strong inferences were drawn from his silence. The Commission found that there had been a violation of the European Convention on Human Rights and specifically the rights of defence guaranteed thereunder. Its conclusion was that "the fact that adverse inferences could be drawn from the applicant's failure to answer questions by the police or account for certain facts already at the pre-trial stage is an element which made it particularly important for the applicant to be assisted by his solicitor at an early stage."

A decision of the European Court of Human Rights is pending in this case but the initial decision of the Commission has highlighted the dangers of the combination of these two severe restrictions on fundamental rights. CAJ urges the Committee Against Torture to question the need for such measures, particularly in the light of last years cessations of violence.

(2) CUSTODY

Para. 71-74
Prison Conditions in England

Since the cease-fires in 1994, CAJ has received complaints from the families of a number of convicted prisoners being held in prisons in England about the conditions in which they are being held. At their request CAJ has drawn these prisoners' cases to the attention of the European Committee on the Prevention of Torture and the International Committee of the Red Cross.

In addition to these specific prisoners, media coverage and visits to Irish prisoners held in England by members of the Irish Parliament has shown that other inmates are being held in conditions which may amount to inhuman and degrading treatment or punishment.

The allegations relate mainly to those who have been categorised as "High Risk Category A" under the Prison Act 1952 and Prison Rules 1964. It seems that some of the men are being held in Special Secure Units and on "restricted regimes".

What this actually means is that the prisoners are under constant supervision by prison staff and by camera. They are searched at least every two weeks and strip searched before and after each visit. We understand that they are permitted one hour out of doors each day (weather permitting) but are not permitted to avail of normal prison facilities e.g. chapel services, the library and the gym.

Medical reports received by CAJ relating to the health of several prisoners in Belmarsh Prison, Woolwich, London have shown that they are, generally, in a poor state of health. In this case, the men face charges relating to their escape from Whitemoor Prison in September 1994. They allege that they were assaulted after their recapture and have been subjected to inhuman treatment ever since. Civil proceedings have been initiated in relation to the conditions in which they are being held.

The medical reports include the conclusions that

(1) Many of the prisoners have lost a considerable amount of weight (in the region of 15-20 pounds) and suffer from bouts of diarrhoea and frequent gastrointestinal and other infections. This, their doctor has indicated, is due to a poor diet and lack of exercise.

The men allege that the food they receive is cold and served on dirty trays. In addition to this they have said that their vitamin and mineral supplements have been withdrawn. Rule 25 of the European Prison Rules states that food should be "suitably prepared and presented". It should also "satisfy in quality and quantity the standards of dietetics and modern hygiene" and take into account the prisoner's "age [and] health".

(2) The men are affected by lethargy and weakness, short-term memory loss and have lost the ability to concentrate. Their doctor sees this as a result of the regime which exists in the Special Secure Unit. The prisoners' association and visiting rights have been severely restricted. It seems that they are only permitted to associate with each other and they allege that they are commonly kept in their cells for up to 18 hours each day.

The case of Patrick Kelly

One particular case which has received extensive coverage in the media and is worthy of comment is that of prisoner Patrick Kelly. Mr Kelly was moved from a Special Secure Unit in Full Sutton Prison to Whitemoor Prison in July 1995. He there joined a "dirty" protest. Mr Kelly is suffering from skin cancer and earlier this year it became evident that he needed urgent medical attention for what is a life threatening condition. Concern was expressed by many politicians including members of the Irish government and Parliament at the delay in treating him. When he was taken to a hospital outside the prison for surgery Mr Kelly was chained to a prison officer throughout family and legal visits.

A report on recent visit to Mr Kelly by members of both houses of the Irish Parliament (Senator Dan Neville and Deputy Mary Flaherty) confirmed that he is now being held in the medical unit of Whitemoor Prison. Mr Kelly has seen his three year old daughter only twice since she was born.

In spite of the already stringent security procedures which apply to all prison visitors and additional procedures to gain access to "Category A" prisoners, the authorities have thought it necessary to impose closed conditions in respect of some prisoners for both family and legal visits.

Family Visits
CAJ has received an alarming number of complaints from the relatives of prisoners in England who have had difficulty visiting their family members. These include allegations that:
(i) they had not been able to visit for six months;
(ii) the visits are held in closed conditions;
(iii) after a long journey (often Ireland to England) the visit did not proceed;
(iv)their treatment at the hands of the prison authorities was unsatisfactory.

It is widely acknowledged that family visits are of the greatest importance to both a prisoner and his/her family. While unconvicted of any crime, the family effectively serves a sentence in terms of restrictions on their lives. The ECPT has recognised that "it is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationship with his family and close friends....The CPT wishes to emphasise in this context the need for some flexibility as regards the application of rules on visits and telephone contacts vis-a-vis prisoners whose families live far away".

Travel to England for such a visit is very expensive. A member of the Irish Parliament, Eamon O'Cuiv, has noted the difficulties with which relatives are faced in their attempts to visit the prisoners. These are compounded for a person travelling with young children - as these people often are - and for the elderly and the infirm.

CAJ has long called for the transfer of such prisoners to prisons near their homes so that they can serve the remainder of their sentences close to their families. Indeed the 1992 Report of the Interdepartmental Working Group's Review of the provisions for the transfer of prisoners between UK jurisdictions (Ferrer's Report) recommended a system of "temporary extended transfers" to allow Irish prisoners to be transferred to Northern Ireland in order to maintain contact with their families and community. While there have been some transfers in recent months, a number of prisoners still in England continue to have problems maintaining contact with their families.

Legal Visits
In respect of legal visits, a solicitor for five of the men held in the Special Secure Unit at Belmarsh Prison was forced to go to court to obtain satisfactory conditions for legal visits to her clients. In her opinion, the imposition of closed legal visits had meant that "representation...[had] become impossible".

An application by her for leave to judically review Home Office policy in this area was recently granted. The judge hearing the application criticised the closed legal visits as an interference with the right to unimpeded access to a court. Collins J. said "One must balance the need for security with the right to legal representation. The situation is thoroughly unsatisfactory." He held the situation to be, prima facie, in contempt of court and ordered that legal visits be held in open conditions until the full hearing of the case.

Despite these strong statements, the solicitor for the men informed CAJ that legal visits continued to be held under closed conditions. Since then the High Court in London has decided that Home Office policy in this area is not against the law and thus closed legal visits continue.

CAJ is concerned at the outcome of this case. We submit that legal visits are an important safeguard against ill-treatment and the imposition of conditions which may amount to cruel, inhuman and degrading treatment or punishment. We urge the Committee to question the government on the need for the continuation of such measures.

CAJ submits that the complaints we have received are indicative of the plight of many of the "high risk" Irish prisoners being held in English prisons. We submit that the conditions in which these men are being held amount to inhuman and degrading treatment. We are further convinced that the conditions which the prisoners describe could be greatly alleviated by action on the part of the authorities including their transfer to prisons closer to their homes and the re-establishment of normal conditions for family and legal visits.

ARTICLES 12 AND 13 INVESTIGATION OF ACTS OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.

Paras 111-116

Articles 12 and 13 are both concerned with the investigation of instances of torture, cruel, inhuman and degrading treatment or punishment and the government, in its report, addresses these Articles together. While this may be a valid means of evaluating the procedures for the investigation of complaints which are in place in Northern Ireland, CAJ is concerned that the government's report ignores the essential difference between the two articles - the initiation of the complaint. Article 13 refers only to a complaint which is initiated by the victim of the abuse him/herself, whereas Article 12 is concerned with the situation where the authorities have reasonable grounds to believe that an act of ill-treatment has been committed.

In effect, the amalgamation of the two articles by the government means that it does not address the fact that the victim is usually in a position where he/she must make a complaint on their own behalf. In this regard it is helpful to refer to the use of CCTV during interviews in holding centres. CAJ is not aware of any case of an interrogation being interrupted at the instigation of the officer observing.

Complaints received by CAJ have indicated that, on many occasions, there have been "reasonable grounds" to believe that ill-treatment has occurred but we are unaware of any investigations being carried out on the basis of the standard outlined in Article 12.

Police Discipline and Complaints in Northern Ireland

The government states that "Paragraphs 155 and 156 of the Initial Report described how the procedures for handling complaints against the police in Northern Ireland are established under the Police(Northern Ireland) Order 1987 and how independent oversight of the complaints and discipline system is exercised by the Independent Commission for Police Complaints [ICPC] for Northern Ireland."

During its examination of the initial report, the Committee Against Torture recognised that where investigations into complaints were carried out by the police themselves, it was difficult to ensure impartiality even in the most civilised societies and, in a situation such as that of Northern Ireland, that problem was greatly exacerbated. Problems of credibility arise primarily from the failure of the complaints system to substantiate a single one of the complaints of assault and other ill-treatment arising out of the regime of emergency detention and interrogation over the last six years.

The key difficulty is that the complaints are investigated by the Complaints and Discipline Branch of the RUC (the police force in Northern Ireland) and merely supervised by the ICPC. The government and police have resisted suggestions made by CAJ to establish an independent investigative mechanism for complaints.

Despite the fact that most of these complaints are not substantiated it seems that many compensation payments are being made by the authorities to individuals who allege they have been the victims of false arrest or ill-treatment.

Reporting on its visit to Northern Ireland in 1993, the ECPT "found it striking that of 395 complaints under emergency legislation in 1992, no disciplinary sanctions resulted." The CPT recommended that there be a review of the composition of the disciplinary tribunal. This has also been the subject of criticism by the ICPC which has itself asked for further powers in order to deal with its problems of public credibility. The Commission called for the establishment of a truly independent tribunal with a legally qualified chairman to hear disciplinary charges. When the Secretary of State for Northern Ireland refused, the ICPC then called for a body consisting of the Chief Constable as chairperson, balanced by two independent assessors drawn from an independent panel appointed for the purpose. This modified proposal has been accepted by the Secretary of State and will be provided for in regulations.

The government has very recently announced its intention to appoint an independent reviewer to look at the police complaints system. While CAJ welcomes this development we do not believe that it should be used to delay the already established need for change.

Para 117-121
Military Discipline and Complaints in Northern Ireland.

The Independent Assessor of Military Complaints Procedures in Northern Ireland

Mr David Hewitt was appointed to this post in 1992. He found that of the 606 complaints that were lodged against the British Military in 1993 only 26 cases (12% of formally investigated cases and 4% overall) were substantiated.

In assessing the military complaints procedures, Mr Hewitt conceded that "these statistics are bound to create dissatisfaction among many observers. In my opinion, much of this dissatisfaction is justified" and he concluded "the bottom line is that in 1993, out of 336 complaints informally investigated and 210 complaints formally investigated, disciplinary action was taken in a very small number of cases and was severe in only one case."

The available complaints procedures in Northern Ireland have been the subject of fierce criticism from a number of international organisations. The UN Human Rights Committee recently concluded that "notwithstanding establishment in the UK of mechanisms for external supervision of investigations of incidents in which the police/military are allegedly involved...as the investigations are still carried out by the police they lack sufficient credibility". It suggested that "specific efforts be made to enhance, in Northern Ireland, confidence in the administration of justice...by putting in place transparently fair procedures for independent investigation of complaints". These statements echo CAJ's longstanding concerns. We urge the Committee Against Torture to adopt a similar view and to encourage the government to provide independent investigations into all allegations of ill-treatment.

ARTICLE 15 CONFESSION EVIDENCE

Para 128
The admissibility standard governing confessions for scheduled or "terrorist"-related cases set out in section 11 of the Northern Ireland (Emergency Provisions) Act 1991 is lower than for confessions under ordinary law (which is set out in the Police and Criminal Evidence (NI) Order 1989 (PACE) and parallels the English standard). Under the EPA defendants must raise *prima facie* evidence of torture or other cruel, inhuman or degrading treatment or violence or the threat of violence and the prosecution must then disprove it. Under PACE the less taxing standard of oppression, or anything said or done likely to render the confession unreliable is used.

Judicial rulings which indicated that a measure of ill-treatment will not of itself rule out confessions have now been superseded and judges will use their discretion to rule out confessions more frequently. However, it must be remembered that interviews under the EPA are carried out without the presence of a solicitor. As pointed out above, silence can also be used as evidence against someone subsequently charged with an offence. Furthermore there is no electronic recording of interviews which would provide an independent record.

During its examination of the government's initial report, the Committee Against Torture noted that an estimated 90% of the cases brought before the Diplock Courts in Northern Ireland rely solely or mainly on confession evidence. This obviously puts the police under great pressure to obtain confessions during interrogation and creates an atmosphere where there is a tendency to force detainees to incriminate themselves contrary to Article 14(3)(g) of the ICCPR.

The recent case of the Ballymurphy 7 has highlighted the inadequate arrangements for the use of confession evidence in Northern Ireland. The case involved 7 young men, a number of them 17 at the time of their arrest. They were charged and tried for a murder attempt on members of a British Army patrol in the Ballymurphy area of Belfast. The evidence consisted only of confessions, obtained according to the defendants by physical and psychological brutality. The trial lasted into the fourth year of their custody. Eventually all the defendants were acquitted; some because their confessions were ruled out and the final three when it emerged that the prosecution had not made substantial relevant documentation available to the defence.

The case became a *cause celebre*, with many convinced of their innocence from the start. The length of the whole procedure was an added injustice for which there is no possibility of redress. When acquitting one defendant who had been in jail for nearly three years, the trial judge Mr Justice Brian Kerr told him that he hoped "he had profited from the experience". In his final judgment, Kerr J. noted that the bulk of the trial had been taken up with testing the confession evidence. He pointed out that an electronic recording of the interviews would have made what took over a year a matter of weeks. Despite this very obvious solution to the problem of length of trial, the police and the Government remain opposed to electronic recording of interviews.

CONCLUSION

In conclusion we submit that the United Kingdom Government has failed to respond adequately to the criticisms made in 1991 by the Committee Against Torture. We share the concerns articulated more recently by the European Committee for the Prevention of Torture that detainees held under emergency law in Northern Ireland run a significant risk of psychological ill-treatment and we are also of the view that the existing framework of "safeguards" is insufficient to prevent physical and psychologicial forms of ill-treatment.