Submission from the Committee on the Administration of Justice (CAJ) to the

United Nations Committee Against Torture (UNCAT) for its 4th periodic examination of the United Kingdom

October 2004

Introduction

CAJ has found that resort to the various UN human rights mechanisms has been very positive in ensuring greater domestic protection of human rights.

In particular, it is our belief that after 1991 interventions to UNCAT, the Committee made a number of extremely important findings with regard to Northern Ireland. We are on record as reporting that, following the release of these findings, there was a marked decrease in the numbers of complaints of ill-treatment made by detainees. Accordingly, we greatly welcome the 4th periodic report from the UK government in conformity with its obligation to submit itself regularly to scrutiny by UNCAT, and we hope that the following material will be of help to the Committee in carrying out a full examination of the extent of the UK's compliance with the Convention inasmuch as it applies to Northern Ireland.

The following report will focus on areas where problems exist or where further advances in the protection of human rights have yet to be made. However, it is important to start by welcoming the many positive changes that have occurred in recent years in Northern Ireland to try and ensure that torture and cruel, inhuman or degrading treatment do not occur or, if they occur, are properly investigated and punished. The changes have come about in large part because the political negotiations which concluded in the Good Friday/Belfast Agreement recognised that there was a need to address directly the human rights abuses that had fed and fuelled the conflict.

It is out-with CAJ's remit to comment on jurisdictions other than Northern Ireland, but we believe that many of the lessons of Northern Ireland could usefully be applied to other jurisdictions. We welcome the relatively frequent references to Northern Ireland in the government's report but note that most of the references read like afterthoughts when the experience in Northern Ireland has a lot to offer elsewhere. For example, we are particularly disturbed at the many initiatives taken by the UK government in its response to the alleged 'war against terror', both domestically and internationally, which appear to totally ignore the important lessons of Northern Ireland. When seeking to end political violence, it is not helpful to set aside the rule of law, to create suspect communities, and to diminish hard-won civil liberties: the Northern Ireland experience proves that this approach is totally counter productive, feeding rather than counter-acting conflict and violence.

The following submission is divided into two: ***Part One*** *addresses the main concerns arising during the last UK examination and UNCAT's recommendations in 1998;* ***Part Two*** *addresses additional issues raised in the UK's 4th report.*

Part One: Main Concerns arising during the last examination of the UK government

1. Emergency Legislation (see also 'List of Issues', items 4, 22)

In UNCAT's last Concluding Observations and Recommendations in 1998 in relation to the UK, the Committee cited as a key factor impeding the application of the provisions of the Convention the "continuation of the state of emergency in Northern Ireland". The Committee went on to note "that no exceptional circumstances can ever provide a justification for failure to comply with the Convention" (para 75).

Northern Ireland has always been subject to emergency legislation (ie since 1921). Even now, with a dramatically improved security situation, Northern Ireland is treated exceptionally within UK anti-terrorist legislation (a specific chapter – Part VII – of the Terrorism Act 2000 is devoted to Northern Ireland). While there is a system of regular review of this legislation and the exceptional provisions for N.I., a narrowing of the provisions is rare. CAJ has always argued that emergency legislation is counter-productive and leads to human rights abuses. However, we find it extraordinary that nearly 10 years into ceasefires by most of the major armed groups, the government still retains its emergency powers with respect to Northern Ireland.

a. The Committee should ask the government to justify why the international test for emergency legislation – ie the existence of a threat to the life of the nation – is met with regard to Northern Ireland, and why government believes that Part VII of the Terrorism Act is both proportionate and necessary to the circumstances.

b. The Committee should ask why Filipino national Ofrasio Jaybe has been detained since January 2004 in N.I., with no timetable for the completion of the police investigation. The Terrorism Act 2000 sets no custody time limits, and NI does not have even the protections offered in England by the Bail Act. Will regulations be introduced in N.I. to govern custody time limits? Moreover, given the recent English Court of Appeal ruling, what reassurance can government give Mr Jaybe's lawyers that evidence gathered as a result of torture or ill-treatment by non-UK nationals in the Philippines or elsewhere will not & cannot be used in a NI court against him?

2. Deaths in police/prison custody & effective inquiries thereafter

There have been some important improvements in Northern Ireland's protections since the last examination – most particularly the creation of an independent Police Ombudsman's office with the power and resources to inquire into all complaints made against the police, and with particular responsibility for inquiring into deaths occurring at the hands of police officers.

At the same time, the Committee may want to question the government delegation closely on a recent House of Lords ruling (In re: McKerr). In March 2004, judges unanimously turned down a request from the son of Gervaise McKerr that the government be compelled to hold an effective investigation into his father's murder. The European Court of Human Rights in 2001 had held unanimously that the government had violated the right to life of Gervaise McKerr and that article 2 of the Convention had been breached because of government's failure to hold an effective official investigation into the death. The McKerr family sought to give effect to this ruling by way of the domestic courts, but have been unsuccessful. The House of Lords determined that because the death had occurred before the coming into operation of the Human Rights Act, the applicant could not rely on its provisions.

In the words of Lord Nicholls of Birkenhead "*by enacting the Human Rights Act 1998 Parliament created domestic law rights corresponding to rights arising under the Convention. When doing so Parliament chose not to give the legislation retroactive effect. In relation to article 2 the intention of Parliament, as interpreted above, was not to create an investigative right in respect of deaths occurring before the Act came into force".* This ruling has rendered domestic follow up to the important rulings handed down by the European Court in relation to article 2 very problematic.

a. The UN Committee should ask the UK government what steps it intends to take to ensure that the McKerr and other similar families have an effective domestic remedy, and that police investigations and inquests are entirely article 2 compliant?

b. The Committee should ask about the long delays in establishing independent public inquiries into a number of cases (including the murder of solicitor Pat Finucane and others) where an international judge has found evidence suggesting official collusion.

The situation in Northern Ireland's prisons is particularly worrying. We comment on concerns around the treatment of women, asylum seekers, and paramilitary prisoners elsewhere, but the statistics on the numbers of self-inflicted injuries and deaths in prison highlights a particular problem. According to the most recent NI Prison Service annual report -

Year	**Number of self-inflicted injuries**	**Deaths**
1998-1999	89	1
1999-2000	70	5
2000-2001	90	1
2001-2002	98	Nil
2002-2003	146	1
2003-2004	188	4

The statistics do not make it clear whether the deaths were anything other than natural causes and inquests are underway, but a Self-Harm and Suicide Prevention policy was apparently introduced by the Prison Service in March 2004. CAJ and others remain very concerned about the extent of both

psychological help available to prisoners, and subsequent inquiries into deaths in detention. In a Corporate and Business Plan covering 2004-2007, a series of important "key performance targets" were established by the Minister, but no reference was made to the issue of deaths or self-harming, or to the medical and psychological services that might be required to tackle these problems (see page 13 regarding recent report on women prisoners).

c. ***The UN Committee should ask what steps are being taken to reduce the level of self-harming in prison in N.I. & for a breakdown of the cause of deaths in prison and any analysis of trends.***

3. The use of prisons for refugee claimants

The United Kingdom government continues to detain in prison in Northern Ireland asylum seekers and others in breach of immigration law. Between March 2003 and February 2004, 30 men, 15 women and three children were detained in Maghaberry prison after seeking asylum or breaching immigration law. In August 2003 the government commissioned a safety review team and the review recommended *inter alia* that 'urgent steps be taken to deal with immigration detainees outside the prison system'. The parliamentary N.I. Affairs Committee in February 2004 also endorsed this finding.

In May 2004 the UK government transferred male detainees from Maghaberry prison to a 'working out centre' (for prisoners due for release) based in the Crumlin Road prison in Belfast. Male detainees were kept apart from other prisoners, and the prison regime was more relaxed than previously applied in Maghaberry - a maximum security prison. However, at the time of writing, this situation has changed again, and detainees have been transferred back to the high security establishment. The men report problems of racist behaviour and religious and cultural discrimination. CAJ is pursuing further details on latest developments and will be in a position to up-date the Committee in Geneva.

Female detainees were transferred alongside other women prisoners to the Young Offenders Centre Hydebank Wood prison; female immigration detainees are held with other women prisoners (including paramilitary prisoners and those serving life sentences for serious crimes). The change has also very importantly meant that families previously detained in Maghaberry are now separated.

Immigration detainees remain in prison and the UK government has failed to effectively address the UN Committee's last report. Immigration detainees are given enhanced prison status (i.e. those privileges available to convicted prisoners who are co-operating with the prison authorities). However, in effect, there is no difference between the treatment received by detainees and other prisoners. Female immigration detainees have the added issue that their new place of detention is an offenders' centre whose prisoners are overwhelmingly male. While detainees and women prisoners are held in a

discrete accommodation block, safety issues based on the proximity between male prisoners and women immigration detainees remain (see page 13)

The Committee should ask what steps are being taken to end the practice of using prisons as places in which to hold refugee claimants and why this is still unresolved six years after the last examination?

4. Holding Centres

UNCAT expressed concern in 1998 at the retention of holding centres in Northern Ireland, particularly Castlereagh Detention Centre which had been the site of many allegations of physical and psychological ill-treatment over the years, and urged the closure of these centres "at the earliest opportunity" (para 76c and 77a). The Independent Commission into Policing (called the Patten Commission after its chair, Chris Patten), which was established in the wake of the peace agreement to draw up a blueprint for policing change, also recommended in September 1999 that these centres "be closed forthwith". The government in its report to UNCAT claims that this recommendation was entirely complied with by 30 September 2001, and that terrorist suspects are no longer held separately from other detainees (UK report, para 183).

However, the UN Committee may want to question the government further on this matter, since the assertion seems to be directly contradicted by a recent report issued by the Oversight Commissioner (an independent oversight mechanism appointed by government to monitor compliance with the Patten recommendations). That report, issued in September 2004, notes that "*Although the three holding centres were originally reported as closed, Gough Barracks did not remain closed, but was used to temporarily house terrorist suspects on three different occasions in 2003…The Police Service now describes Gough Barracks as a 'mothballed' facility, which will continue to be used as an alternative site until Grosvenor Road* (a police station) *can be renovated to house terrorist suspects*" (page 48, 11th report of Oversight Commissioner, September 2004).

The UN Committee should ask government for clarification of its statement about the closure of all holding centres, and ask for a timetable as to their total closure.

5. Plastic Bullets and Public Order

In 1998, UNCAT recommended "the abolition of the use of plastic bullet rounds as a means of riot control". The Patten Commission in 1999 noted (para 9.14) " *In view of the fatalities and serious injuries resulting from [plastic bullets], and the controversy caused by their extensive use, we are surprised and concerned that the government, the Police Authority and the RUC [the police] have collectively failed to invest more time and money in a search for an acceptable alternative*". The Patten report recommended "*an immediate and substantial investment be made in a research programme to find an*

acceptable, effective and less potentially lethal alternative to the [plastic bullet]". Thankfully, many fewer bullets have been fired in recent years and CAJ believes that this is due in large part to (a) the criticism from several quarters of their excessive and indiscriminate use in the past as a form of crowd control (not least the UN's own concerns) and (b) greater domestic oversight of the police use of such weapons. All police plastic bullet firings are now inquired into by the independent Police Ombudsman and are subject to oversight by the Policing Board which has a more cross community representative membership than its predecessor civic oversight body.

Two important problems remain however. Firstly, there is the issue of military resort to the firing of plastic bullets. According to the review carried out by the Independent Assessor of Military Complaints Systems, the army in 1999 fired less than 1% of all plastic bullets fired, approximately 20% of those fired in 2000 and 2001, and 30% of the bullets fired in the first ten months of 2002. Contradicting his own findings, he concluded "*there are no grounds for believing that the army is being used to fire Baton Rounds instead of police officers doing so".* CAJ obviously welcomes the dramatic decrease in resort to this lethal weapon, but notes that any comparative increase in army firing feeds speculation that the army are on occasion used as surrogates because they are subject to less stringent oversight than the police. Any such impression risks undermining confidence in the rule of law and undermines the credibility of recently-introduced police scrutiny systems.

Secondly, government in response to the Patten criticisms cited above, established a working group to look at "alternatives" to plastic bullets (see government submission to UNCAT, para 114). Government has, however, proved unwilling to engage independent scientific, medical or human rights expertise in this study. The expectation is that government will shortly announce an 'alternative' that is in essence, merely a soft nosed plastic bullet.

The Committee should ask what progress has been made in removing all forms of plastic bullet from the armoury of public order weaponry?

It is unclear to what extent UNCAT is willing to address other developments in terms of public order policing. Northern Ireland for example is considering a variety of police responses in terms of CS spray, taser guns etc., though it is not clear if these will be introduced for the purposes solely of restraining individuals or in wider public order situations (see government report, paras 107 and 108). However, the Committee may want to comment on the importance of developing and retaining public confidence in the resort to force by the police and the importance of close public scrutiny of the choice of weapons. CAJ expressed grave unhappiness at the decision of the policing authorities to introduce CS spray without canvassing fully the medical and scientific evidence available. Though the weapon has already been used several times over the summer, the guidelines which would allow the police to be held properly to account for its use are not yet in the public domain.

The Committee should ask when it is intended to place the guidelines for CS in the public domain and what the authorities are doing to ensure long term monitoring of the medical & other consequences of CS spray.

6. Policing

UNCAT in 1998 made specific reference to the policing and the need for *"reconstruction of the Royal Ulster Constabulary, so that it more closely represents the cultural realities of Northern Ireland*". Major changes have occurred to policing in the interim, and UNCAT may want to welcome a number of the changes, which offer interesting models for elsewhere. For example, Northern Ireland now has an independent police complaints system; a civic oversight body with greater cross community representation than previously; and the police service itself has introduced a tough Code of Ethics, changed its name and instituted a recruitment quota system to ensure that it can command confidence across the community. Serious concerns remain however in the area of human rights training (commented on elsewhere)

There are however a number of areas that the Committee may want to explore: (a) why the government resisted asking all current (as well as new) officers to formally and explicitly swear to the new police oath upholding human rights; (b) what follow up has been given to Patten's proposals for police renewal by way of a tenure policy for the particularly contentious Special Branch - what changes in personnel have occurred and where have long serving Special Branch officers now been deployed; and (c) the extent of genuine community involvement in the design and delivery of training to the police.

7. Holy Cross events (List of Issues 6)

The world's media reported on the protests that took place in and around Holy Cross school in North Belfast in 2001. Over a period of several weeks, protestors hurled sectarian abuse and worse at parents and small schoolchildren (aged between 4 and 11) as they made their way to school. One of the parents subsequently took a court case arguing that the police had not acted effectively in securing their rights; the case was unsuccessful. The court ruling was interesting in a number of regards, not least with its summary of the nature of the protest – *"the campaign of abuse intensified. Bricks and bottles, fireworks, balloons filled with urine, excrement and other rubbish were flung at these young children and their parents as they made their way to the school. They were verbally abused and threatened. Blast bombs and pipe bombs were also thrown"* (para 6, In the Matter of an Application by 'E' for judicial review, KERF4184, 16 June 2004). Elsewhere the judge noted that the children "*displayed a wide range of nervous symptoms. Many of the young children required counselling even after the protest ended*" (para 13).

Although the judge found against the applicant, and concluded that it was unnecessary for him to reach a ruling on the substantive case made about a

breach of article 3 of the ECHR, he went on to say, in a somewhat roundabout way, *"I would not be prepared to say, however, that the indignities, threats and naked intimidation to which the applicant was subject would not amount to 'inhuman or degrading' treatment for the purposes of article 3".* It is very disturbing that an event described by the judge "*as one of the most shameful and disgraceful episodes in the recent history of Northern Ireland*" secured no remedy at all for the parents or the children.

In fact, the judgment seemed to imply that a very wide area of discretion is properly left to the police even in areas as fundamental as alleged breaches of article 3 of the European Convention. The judge concluded that "*the immediate reaction of right thinking people is that those who intimidated, threatened and attacked those children and parents, who blocked their way and frightened them were committing criminal offences; they should have been prevented from doing so; they should have been arrested and prosecuted. Sadly policing options and decisions do not readily permit such uncomplicated solutions….It is precisely because the Police Service is better equipped to appreciate and evaluate the dangers of secondary protests and disturbances that an area of discretionary judgment must be allowed them, particularly in the realm of operational decisions. While the sense of grievance of the parents is perfectly reasonable and the perplexity of those who could not understand why the police did not adopt more forceful tactics is unsurprising, I cannot accept that it has been established that the measures taken by the police were unreasonable" (p*aras 45-46 of the judgment)

The Patten Commission had looked closely at the theory of the police's "operational independence". They noted the importance of the police being independent of any partisan considerations, but concluded that operational independence did not mean that the police "conduct of an operational matter should be exempted from inquiry or review after the event by anyone. <u>That should never be the case"</u> (emphasis added, para 6.21 of Patten report).

***The Committee asks for positive examples of judicial remedies secured by those challenging torture or cruel, inhuman or degrading treatment: the above is clearly not such an example. Government should be asked what other remedies are available to the Holy Cross children*?**

Part Two: Concerns arising from the government's 4th Periodic Report to UNCAT (2004)

Para 7 (and List of Issues, 21): There has been a review of the UK's international human rights obligations, though little change was proposed. No justification was proffered for not agreeing to be bound by article 22 of the Torture Convention and the right of individual petition. Instead, government decided to conditionally accept the right of individual petition under the Optional Protocol to CEDAW "*so as to enable it to consider on a more empirical basis the merits of the right of individual petition which exists under*

a number of UN treaties…the government proposes to review this experiment two years after the coming into force of this Protocol". It is however far from clear what relevance positive or negative experiences of individual petition under CEDAW would have for a consideration of article 22 of UNCAT. NGOs have speculated that this may be simply a delaying tactic on the part of government to defuse criticism. ***The Committee should pursue why the governmental review of its international human rights obligations did not lead to acceptance of the right to individual petition under the Torture Convention, or incorporation of UNCAT per se.***

Para 8: While CAJ welcomes the fact that the UK is playing a positive leadership role internationally in promoting the Optional Protocol to CAT, it is not at all clear what arrangements, if any, have been made to apply the provisions of OPCAT domestically. The Northern Ireland Human Rights Commission (NIHRC) is currently the only institution in any UK jurisdiction which has the status of a National Human Rights Institution (though even it is not entirely Paris Principles compliant). This body has been denied access to Rathgael Juvenile Justice Centre and to the women's prison at Hydebank (see on). ***Given the UK's commitment to the international operationalisation of OPCAT, government should be asked why it has refused the NIHRC access to detention facilities, and how and when it will operationalise its commitment to domestic visiting mechanisms***.

Para 9: The government here implies that the passage of the Human Rights Act resolves a number of problems but recent court rulings have suggested that the protections on offer are not watertight. For example, the narrow definition of "victim" in the Act has led to some problematic recent court rulings: the Northern Ireland Commissioner for Children and Young People was not considered a 'victim' for the purpose of the Human Rights Act, thereby rendering it necessary for individual children always to be ready to take cases in their own name. This poses an unfair burden on children and young people. A similar problem arose in the context of the judicial review taken by a Holy Cross parent (see earlier remarks). See also our earlier reference to the House of Lords judgment In re: McKerr and the fact that the Human Rights Act has no retrospective domestic impact, though the UK was a signatory of the ECHR for decades before the Act's passage.

Para 22: The Committee might want to ask government to cite any legislation which has gone to parliament which has not been considered Human Rights Act compliant by government – this rubric on all draft legislation is seen as a mechanistic exercise which in fact risks undermining the authority of the Human Rights Act.

Para 51: Government reports in this section on the operation to date of the quota system applied to all new recruits to the N.I. police. This 50:50

quota system was introduced as a result of the Patten recommendations and despite a lot of controversy has now been largely accepted as necessary to ensuring a much more representative police service. A number of safeguards exist to ensure that everyone is treated fairly. Catholics compose more than 40% of the population of Northern Ireland, but constituted less than 8% of the old Royal Ulster Constabulary. Thanks to 50:50 and a range of other measures, the most recent statistics indicate that the Catholic representation amongst police officers in the police service has increased to 13.9%, though this hides some of the disparities in different branches of the service. A recent independent review of the extent of compositional change for example commented critically on the lack of change in civilian staff. Catholic civilian staff rose only from 12.3% of the total in 1999, to 14.4% in 2004 (a rise of only 2.1% over a 4-year period). ***The Committee should ask what steps government intends to take to ensure that all branches of the police service (civilian staff, Part Time Reserve, and regular service – the Full Time Reserve is being phased out) are representative of the community at large and thereby command greater confidence.***

Para 57: CAJ disagrees strongly with the government claim that there was wide consultation on the matter of police training. It is CAJ's experience that there is a great defensiveness on the part of the police vis-a-vis comments by external bodies, and we have expressed concern about the composition of the Learning Advisory Council which is meant to consist of a third of community representatives, but which has nothing like such representation. Elsewhere CAJ suggests that the Committee ask government what steps it intends to take to ensure greater community involvement in the design and delivery of police training. (CAJ is not repeating here material from the NI Human Rights Commission's evaluation of police human rights training which is cited in extenso in the submission from British Irish Right Watch before the Committee).

Para 80 and 88: Gradually the many protections necessary to ensure the proper protection of suspects during interview and the due process of law are being introduced. However, despite years of lobbying to ensure that audio and video recording of interviews be made a matter of routine, the Oversight Commissioner noted that in April 2004 "*the 1999 recommendation that video recording, or CCTV, should be introduced in PACE custody suites has not been fully implemented".* Indeed CCTV systems have been installed at only four of the 22 existing custody suites. The importance of this safeguard was only further underlined with the findings of a Police Ombudsman's inquiry in March 2003 into allegations of police intimidation made by solicitors. Fifty-five solicitors indicated that they had experienced police intimidation, either directly or via clients. While just under half said that they had experienced such intimidation only once or twice, the majority indicated that this had occurred three or more times; just under half indicated that the most serious incidents had occurred on police premises. Commentators have suggested that these statistics are on the low side since several solicitors active on some of the more contentious cases had not responded to the questionnaire.

Para 97 (List of Issues, 11): It is noteworthy that there is no reference to Northern Ireland in this section of the report, where the government delayed introducing anti-race discrimination legislation for 20 years on the grounds that there were very few people of different ethnic minorities in Northern Ireland. Thanks in large part to interventions by the UN Committee on the Elimination of All Forms of Racial Discrimination, in support of local NGO efforts, Northern Ireland has legislation since 1997 outlawing racial discrimination, on a par with Britain. This now means that the police are, rather belatedly, keeping records on racist attacks – which are on the increase - and it seems that because of better recording and/or because of an increase in such attacks, there is much greater public awareness of the level of hate crime expressed against those of a different race or ethnicity. ***The Committee should ask government what steps have been taken to tackle institutional racism in key criminal justice agencies – the police, the Courts Service, the Prosecution Service and in prisons.***

Para 106: Government refers to the reports on the coronial system but does not refer to the findings of the European Court of Human Rights in the cases of Jordan, McKerr, Shanaghan, Kelly et al (May 2001) and Finucane (July 2003) in which the court found that the procedures of Northern Ireland's coroners' system were inadequate in respect of the investigation of deaths. Since then the government has amended the Rules to ensure the compellability of persons suspected of causing death and it has also provided a limited scheme of legal assistance for next of kin in inquests. However there have been a number of judicial review actions on the remit of inquests, the disclosure requirements, and the inability of inquests to deliver verdicts. The Northern Ireland Court Service reported that at the end of 2003 a total of 1392 cases were outstanding before Northern Ireland's coroners, but even this figure does not cover the whole of Northern Ireland. ***The Committee should ask the government when and how it intends to comply with these European Court judgments; and has an Implementation Plan and a timetable been established for ensuring effective investigations into all deaths where human rights violations have been alleged.***

Para 108: Government explains that ACPO (the Association of Chief Police Officers) have developed detailed guidelines for the use of CS spray. It is CAJ's understanding that the police service in Northern Ireland have adapted these guidelines – supposedly to a higher standard – but we have been unable to access a copy of the guidelines (this is commented on earlier in this report). ***It would be excellent if the Committee emphasised the importance of openness, transparency and accountability when the police are considering the introduction of new weaponry, and also insist that agreed guidelines be placed in the public domain.***

Para 136: The government's one paragraph reference to the prisoner situation in Northern Ireland overlooks some important issues. We address

elsewhere in this paper the issue of the detention of asylum seekers, and the serious problems of self-harm and deaths in prison custody.

Moreover, there is the issue of women prisoners (see List of Issues 13 and 20). Women prisoners have been transferred from Maghaberry prison to facilities in the same grounds as the Young Offenders centre at Hydebank Wood. The Northern Ireland Human Rights Commission has recently prepared a major report that we understand will be being submitted independently to UNCAT. It records early concerns about the transfer, comments on the lack of consultation, and details a series of very serious problems arising as a result of the transfers. Women were moved from a female unit in a high security male establishment to a female unit in a lower security male young offenders centre The prison service stated the reason for the move was that it was a better environment for the women; but the cells are approximately one third smaller than those at Maghaberry, there are no in-cell sanitation facilities, the women have to share hospital and other core facilities with young males, and they report experiencing abuse from the male prisoners. There are also concerns that the facilities to enable mothers to keep their children with them are inappropriate and inadequate. Of particular concern is the fact that the regime at Hydebank means that prisoners are strip searched after visits. ***The UN Committee should ask the government why the NIHRC has been denied access to the facility since the transfer and what steps are being urgently taken to remedy what amounts to a grave deterioration in conditions for women prisoners in Northern Ireland?***

A second issue relates to prisoner segregation. In 2003 a series of incidents highlighting calls for segregation of prisoners according to their political allegiance, led to the Steele Review. The review recommended that loyalist and republican prisoners should be accommodated separately from each other on a voluntary basis for the safety of both prisoners and staff. It also recommended training for staff working with these prisoners. These proposals were accepted by government, and a Compact was agreed in relation to unlock, meal times, association, exercise times and visits. However, prisoners who have moved into the segregated area out of fear for their safety elsewhere in the prison feel that the current regime is punitive and oppressive, and far more restrictive than that agreed in the Compact. A judicial review is underway. ***The Committee should ask about the Compact, whether prisoners who ask to be segregated are in any way being subjected to a punitive regime as a consequence, and whether prison officers received training as recommended by the Steele review.***

Para 177: In Northern Ireland there is a review underway into the treatment of mental health. The NI Human Rights Commission issued a major report on the topic and will presumably be submitting this research to UNCAT directly. The Commission raised concerns in their excellent report about compulsory admission to hospitals, the appeal processes regarding detention, compulsory medical treatment, inadequate testing of consent to treatment, and the limited powers and resourcing of the Mental Health Commission which might otherwise provide an important safeguard for those detained under mental

health provisions. ***The Committee should ask what steps government took in response to the NIHRC report and what timetable it envisages for concluding and operationalising the findings of the review body it has established.***

Paras 192/225: CAJ is currently developing a detailed assessment of the work of the Police Ombudsman's Office and is raising concerns about the quality control of investigations, the independence of investigators, substantiation rates etc. In general terms, however, we welcome the fact that this institution is independent of the police & has the powers necessary to give the public greater confidence that complaints will be properly investigated.

Para 267: CAJ is aware that NGOs working directly on the issue of children's rights are making submissions to UNCAT and they will want to comment on the concerns around the "reasonable chastisement" debate. The Joint Committee on Human Rights indicated very clearly to parliament in September 2004 that draft legislation before it enabling parents to continue to justify common assault as 'reasonable punishment' would not comply with international human rights treaties signed by the UK. It recommended replacing this clause with equal protection for children under the law on assault. ***The Committee should seek assurances from government that it will comply fully with its international human rights commitments and uphold children's rights, by amending legislation on chastisement in line with advice from the Joint Committee.***

Para 278: Government suggests that *"in recent years a greater emphasis has been placed on diverting young people from crime and reducing the need to place them in custody".* This would be a stance that CAJ would wholeheartedly endorse, but it is not borne out in practice.

Anti-Social Behaviour Orders have recently been introduced in Northern Ireland – they are civil orders, breach of which can lead to a custodial sentence of up to five years. As civil orders, the burden of proof is lower than in criminal proceedings, and hearsay evidence is admissible. They can be applied to children as young as 10 and basically they criminalise children 'by the back door'. These Orders are already creating very worrying problems in England – a recent court ruling determined that the publication of details (name, age and photo of the child) did not violate their article 8 (privacy) rights under the European Convention (R v. Metropolitan Police Authority, Brent London Borough and Secretary of State for the Home Department). The publicity widely circulated on the children given ASBOs was considered not to have violated the ECHR tests of 'necessity' and 'proportionality'.

Yet bad as these Orders may be in England, they risk particularly serious consequences for children and young people in Northern Ireland, and the particularities of the risks posed to children here appears to have received little or no consideration from the Minister concerned. Thus, given the highly

segregated and polarised nature of NI's society, the consequences of excluding young people from their normal residence could have dangerous consequences. Moreover, the publicising of children's photographs and identifying information could have – and indeed already has had – particularly detrimental consequences in Northern Ireland where there is a risk of action being taken by local paramilitary 'enforcers'. ***The Committee should ask the government to explain how its introduction of ASBOs in Northern Ireland can be justified in light of their stated policy to use custody only "for the most serious and persistent young offenders".***