

CAJ's submission no. S407

CAJ's Submission to UNCAT on the 5th Periodic UK Report

April 2013

About CAJ

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

Submission from the Committee on the Administration of Justice (CAJ) to the United Nations Committee Against Torture on the UK's 5th Periodic Report under the Convention Against Torture

April 2013

Introduction

1. The Committee on the Administration of Justice (CAJ) is an independent human rights NGO with cross community membership in Northern Ireland and beyond. It was established in 1981 and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its international human rights obligations. CAJ is grateful to the Belfast-based children's rights NGO the Children's Law Centre for the information they provided to assist us in compiling this report.

2. CAJ welcomes the long awaited 5th Periodic Report from the UK government in conformity with its obligation to submit itself regularly to scrutiny by the Committee Against Torture ('the Committee').¹ CAJ welcomes the positive initiatives that have occurred recently in Northern Ireland, most notably within the prison system. This submission is organised thematically covers the following areas of concern:²
 - Emergency law: non-jury trials (Article 2)
 - Secret Courts (closed material procedures) (Article 15)
 - 'National security' limitations on competent investigative bodies (Articles 12-14)
 - Dealing with the legacy of the Northern Ireland conflict (Articles 12-14)
 - Prison reform in Northern Ireland (Article 16)
 - Bill of Rights for Northern Ireland (Article 2)
 - Use of force by Police (Article 16)

¹ CAJ would however raise concerns regarding the inconsistency of the government's approach to reporting: most often specific information is given as regards to England and Wales and is sometimes supplemented by info for Scotland and/or Northern Ireland. For example, the report speaks of the Constitutional, Political and Legal Structure of Prisons, Probation and Parole in England and Wales, and Scotland (para 720-726) but not in Northern Ireland.

² The submission has been compiled with reference to the 5th Periodic Report from the UK (CAT/C/GBR/5, 21 May 2012 due to the Committee in 2008 but not received until September 2011); the Committee's List of Issues (adopted by the Committee at its forty-nine session 29 October-23 November 2012, CAT/C/GBR/Q/5, published 17 January 2013) and UK's Written Reply to the list of issues adopted (CAT/C/GBR/Q/5/Add.1, 27 March 2013).

Emergency laws: Non Jury Trials (Article 2)³

3. The 5th Periodic Report from the UK states 'The Northern Ireland-specific provisions contained in Part VII of the *Terrorism Act 2000* were repealed on 31 July 2007 as part of a security normalisation programme that also involved the removal of other security measures. Terrorism legislation in Northern Ireland is now for the most part identical to rest of the UK' (para 30). However the Justice and Security (Northern Ireland) Act 2007 is unique to Northern Ireland and simply replicated many emergency powers. This includes specific provision for non-jury trials. Although the information available is patchy, there appears to have been a marked decrease in non-jury trials in recent years, yet the present arrangements continue to de facto treat Northern Ireland as if it were in an emergency situation.⁴
4. Under the arrangements of the Justice and Security (Northern Ireland) Act 2007 the Director of Public Prosecutions (DPP) for Northern Ireland may issue a certificate which allows a trial on indictment of the defendant to be conducted without a jury if certain conditions, as set out by s1 of the Act are met. In order to issue a certificate, the DPP must be 'satisfied' that 'there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury'. However, CAJ feels that the term 'satisfied' demonstrates a very low threshold and permits a broad application of the power to issue certificates, even when applied in conjunction with the prescribed conditions.
5. The powers require renewal every two years⁵ and have just been subject to a review by the UK Minister for Northern Ireland (the Secretary of State) to which CAJ responded. CAJ expressed the view that:

³ The Committee's List of Issues (para 4) makes reference judgments of the European Court of Human Rights (ECtHR) on UK jurisdiction in relation to acts committed abroad. CAJ has long maintained torture, inhuman treatment and abuse of power fuel conflict and to this end CAJ believes that there are significant lessons to be learnt from the handling of the conflict in Northern Ireland in relation to the 'war on terror'. (See publication: *War on Terror: Lessons from Northern Ireland*, CAJ, 2008).

⁴ According to information provided by Northern Ireland Courts and Tribunals Services, there were 64 non-jury trials in 2007 (all under the Terrorism Act); 33 in 2008 (15 under the Justice and Security Act & 18 under the Terrorism Act); 17 in 2009 (13 under the Justice and Security Act & 4 under the Terrorism Act); and 17 in 2010 (all under the Justice and Security Act). There were 2 cases of juror intimidation in 2008 (neither of which were switched no non-jury trials); 3 cases of juror intimidation in 2009 (none of which were switched no non-jury trials); and 1 case of juror intimidation in 2010 (this case was switched to a non-jury trial).

⁵ The UK Periodic report states that 'the system of non-jury trial is temporary. It can be extended for periods of two years with the agreement of Parliament. The Secretary of State for Northern Ireland intends to renew the current provisions, which expire on 31 July 2011 [sic], for a further two years. An Order has been laid before Parliament to this effect' (para 39). The provisions were renewed in 2011. Another two years have passed and the provisions are set to expire 31 July 2013.

...there continues to be no substantive body of evidence within the public domain to suggest that there is a serious problem of juror intimidation in Northern Ireland that necessitates non-jury trials. Moreover, it would appear that other mechanisms and reforms, which would make the possibility of juror intimidation less likely to occur, have not been sufficiently explored. CAJ suggests that mechanisms, such as the use of 'out of town juries', be trailed to supplemented juror protection measures already in place.⁶

The Committee may wish to ask the UK for evidence that the non-jury trial provisions of the Justice and Security (Northern Ireland) Act 2007 are proportionate and necessary.

Secret Courts (Closed Material Proceedings) Article 15

6. The Committee's List of Issues ask if the UK has modified the Special Advocate System to guarantee fully effective legal representation following the determination by the European Court of Human Rights in *A et Al. v. UK* (application no. 3455/05) that the system was insufficient to safeguard detainees' rights. The Committee also queries the related implications of extending the Closed Material Proceedings (CMP) to civil cases (para 31).
7. Although the UK's plans to extend CMPs to civil cases came about in response to the practice of extraordinary rendition, CAJ has concerns about the impact CMPs will have on Northern Ireland cases dealing with matters protected under the Convention. There are a range of civil proceedings in Northern Ireland dealing with the legacy of the conflict which would be affected by the introduction of CMPs. These include Judicial Reviews of investigations into conflict-related human rights violations (e.g. challenges to police or Ombudsman investigations, Inquests, decisions not to prosecute etc). They also include civil actions for damages relating to ill-treatment and torture. CMPs are likely to be used in what are already the most controversial of cases, namely those which engage the actions of police informants and agents within paramilitary organisations.
8. CAJ is already concerned at the impact of existing provisions which allow the use of 'secret evidence' in Northern Ireland. Most prominently there are the provisions to recall paramilitary ex-prisoners who had been released on licence under the terms of the Belfast/Good Friday Agreement to prison on the basis of evidence which can be given in a closed material procedure.⁷

⁶ CAJ's commentary to the Northern Ireland Office on "Non-Jury arrangements in Northern Ireland" (available at: <http://www.caj.org.uk/contents/1160>).

⁷ For further information see CAJ Submission to the Second Reading of the Justice and Security Bill on 'Closed Material Procedures' (available at: <http://www.caj.org.uk/contents/1110>)

The Committee may wish to raise with the UK the particular impact of CMPs in Northern Ireland.

‘National Security’ limitations on competent authorities (Article 12-14)

9. In addition to the issue of CMPs providing for secret courts in ‘national security’ cases the current reporting period has seen the expansion in Northern Ireland of ‘national security’-based limitations on the competent authorities who are to conduct prompt and impartial investigations into allegations of torture. These limitations also fetter the powers of related policing and prisons oversight and accountability bodies in discharging their broader functions. Such functions include ensuring accountability for matters protected by the Convention. There is no statutory definition of ‘national security’ in the UK, with Government preferring not to define the concept in order maintain ‘flexibility’ in its application.⁸ The vagueness of ‘national security’ hinders the normalisation process⁹ in Northern Ireland and makes scrutinizing the use of ‘national security’ for exemptions of policy and practices more difficult. CAJ has raised concerns about ‘national security’ exemptions a number of times in recent years.¹⁰
10. The range of accountability bodies which have their investigatory or oversight powers curtailed in circumstances when they engage ‘national security’ matters include: The Northern Ireland Human Rights Commission,¹¹ the Northern Ireland Policing Board,¹² the Police

⁸ The internal Security Service (MI5) website states ‘The term ‘national security’ is not specifically defined by UK or European law. It has been the policy of successive Governments and the practice of Parliament not to define the term, in order to retain the flexibility necessary to ensure that the use of the term can adapt to changing circumstances.’ See www.mi5.gov.uk/home/about-us/what-we-do/protecting-national-security.html [accessed March 2013].

⁹ The UK government commitment in the context of the peace process by which security arrangements are normalised and emergency measures are repealed.

¹⁰ Submission to the Scrutiny Committee on Protection of Freedoms Bill, May 2011

http://www.caj.org.uk/files/2011/06/07/S337_CAJs_submission_to_the_Scrutiny_Committee_-_Protection_of_Freedoms_Bill.pdf ; Submission to the Department of Justice’s DNA Database consultation, June 2011

http://www.caj.org.uk/files/2011/06/09/S338_CAJs_submission_to_the_Dept_of_Justices_DNA_Database_Consultation,_June_2011.pdf;

Response to the Home Office Review of Counter-Terrorism and Security Powers, January 2011

http://www.caj.org.uk/files/2011/03/01/S294_Sub_to_Home_Office_Review_of_Counter-Terrorism_and_Security_Powers_Jan_2011.pdf;

Submission To The Home Office Policing Powers And Protection Unit Re Keeping The Right People On The DNA Database, July 2009

http://www.caj.org.uk/files/2000/01/03/S239_Submission_to_the_Home_Office_Policing_Powers_and_Protection_Unit_re_Keeping_the_Right_People_on_the_DNA_Database_July_2009.pdf

¹¹ Under the Northern Ireland Act 1998 (as amended by the Justice and Security Act 2007) the Northern Ireland Human Rights Commission (the NHRI for Northern Ireland accredited with ‘A

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Ombudsman, the Prisoner Ombudsman, Criminal Justice Inspector for Northern Ireland, Her Majesties Inspector of Constabulary (HMIC)¹³ and the Attorney General for Northern Ireland.¹⁴

11. In October 2007 the UK formally transferred primacy for one of the most sensitive areas of mainstream policing, covert 'national security' policing, away from the Police Service of Northern Ireland (PSNI) to the Security Service MI5. This relates to the covert policing (surveillance, running of agents and informers etc) of paramilitary groups. The transfer was first announced to the UK Parliament in 2005,¹⁵ and the arrangements were set out in an annex from the British Government to the 2006 UK-Ireland St Andrews Agreement.¹⁶ This move therefore led to this significant area of mainstream policing, now designated as 'national security', being transferred entirely outside of the remit and powers of both the oversight body – the Northern Ireland Policing Board and the investigatory complaints body – the Police Ombudsman. The transfer may also limit the powers of accountability bodies over PSNI officers working with MI5, given the control the Security Service has over matters such as information disclosure. As the Committee may be aware the investigatory bodies with competency over the Security Service MI5 have been heavily criticised by Parliament and human rights groups and include the Investigatory Powers Tribunal which has never upheld one single complaint against the agency.¹⁷ Unlike the PSNI the Security Service MI5 also has a blanket exemption from disclosing information under freedom of information legislation.¹⁸

status' by the International Coordinating Committee of NHRIs) has powers of investigations under s69A. However, under s69B the powers are extensively limited if they engage national security matters.

¹² See sections 33A & 59 of the Police (Northern Ireland) Act 2000 (as amended by the Police (Northern Ireland) Act 2003) in relation to provisions in relation to police powers not to disclose 'national security' information to the Policing Board.

¹³ In powers to withhold or redact information from investigations and reports by these agencies-see Protocol on 'Handling Arrangements for National Security Related Matters After the Devolution of Poling and Justice to the Northern Ireland Executive', paragraphs 8-9.

¹⁴ The Attorney General for Northern Ireland (an independent office in the jurisdiction) has a power under s14 of the Coroners Act (Northern Ireland) 1959 to direct the coroner to hold an inquest. However if the Secretary of State (a UK Government Minister) certifies that there is information the disclosure of which may be against the 'interests of national security' the Attorney General cannot exercise the power which instead passes to the Advocate General for Northern Ireland (a member of the UK government cabinet).

¹⁵ Written Ministerial Statement, National Security Intelligence Work, Paul Murphy MP, Secretary of State for Northern Ireland, House of Commons Official Record, 24 February 2005, column 64WS.

¹⁶ Annex E. UK-Ireland St Andrews Agreement 2006.

¹⁷ For further information see the CAJ report 'The Policing You Don't See: Covert policing and the accountability gap: Five years on from the transfer of 'national security' primacy to MI5' Belfast CAJ, 2012) available free at: <http://www.caj.org.uk/publications>

¹⁸ s23-24 Freedom of Information Act 2000. There are also broader national security exemptions under this act which is discussed in the UK Periodic Report (paras 787-789).

12. In April 2010 the UK Parliament transferred ('devolved') most policing and justice powers to the competence of the regional Northern Ireland Assembly and its executive. At this time the UK Government also produced a Protocol, obtained by CAJ under freedom of information, setting out 'Handling Arrangements for National Security Related Matters' following the transfer of these powers.¹⁹ The arrangements the protocol sets out would limit the ability of competent bodies in Northern Ireland to exercise investigatory and oversight powers effectively in relation to matters protected by the Convention. Among the matters contained are powers for the UK executive to determine control and disclosure of information. The Protocol provides that:
- 'UK government will determine what information pertaining to national security can be shared [with devolved Minister of Justice] and on what terms' and that information on the modus operandi of MI5 and other agencies 'will not be shared' (para 5)
 - 'The NIO [UK ministry for Northern Ireland] will retain ownership and control of access to all pre-devolution records...' and the NIO will provide access to Department of Justice (DoJ) officials to such records only on devolved matters and only when they are needed to carry out post-devolution functions. DoJ officials will have no access to records 'that relate to matters of national security' (paras 10-11)
 - The Minister of Justice and Northern Ireland Assembly will be responsible for 'all policing functions' except 'those aspects of the PSNI's work – past, present and future – that have a national security element or dimension.' (Annex A, para 3.1)
 - The Police and Prisoner Ombudsman will normally report to the [Northern Ireland] Minister of Justice but will report to the a UK minister (NIO Secretary of State) on 'national security' matters who may issue the Ombudsman with 'guidance' on 'matters relating to national security.' (Annex A, paras 4.1 & 6.1)
 - The Chief Inspector of Criminal Justice will be appointed by the Northern Ireland Minister of Justice but insofar as their work 'touches on national security issues' the NIO Secretary of State will have a 'consultative role' in the development of the Chief Inspectors workplan and the Chief Inspector is required to obtain the Secretary

¹⁹ NIO Protocol on 'Handling Arrangements for National Security Related Matters After the Devolution of Poling and Justice to the Northern Ireland Executive'. In response to a question in the UK Parliament the Minister indicated this protocol was shared with a Northern Ireland Assembly Committee in March 2010 (Official Record Hansard WPQ 15 March 2010: column 254W).

of State's permission for publishing any reports which contain 'national security information' (Annex A, para 9.1)

- When the Northern Ireland Minister of Justice or Policing Board set up a Panel to adjudicate on misconduct by a police officer, if the case relates to national security information the 'UK government will decide what information can be passed on to the panel and, if information is withheld, whether the panel can be informed of that fact.' (Annex A, para 11.2)

13. In addition to this, there are arrangements in the legislation which change the chain of command and accountability of key officials whose activities can engage matters protected by the Convention. In prisons the devolution of justice powers in 2010 led to an understanding that prisons, prison rules and prisoners' welfare are now the responsibility of the Northern Ireland administration, and hence prison officers are ultimately accountable to the Northern Ireland Minister of Justice. Whilst this is generally the case, prison matters designated as 'national security' (such as the rules for who should be held in 'separated' [paramilitary] wings, surveillance and intelligence gathering regulated by the Regulation of Investigatory Powers Act 2000 and the use of such information) are retained by the Secretary of State (A UK Government Minister). Furthermore when prison staff are deemed to be engaging in such 'national security' related activity they cease to be accountable to the devolved administration and instead become 'officers of the Secretary of State' and hence answerable to the Northern Ireland Office (NIO). Clearly there are practical issues in relation to how a chain of accountability and oversight is maintained in these circumstances.²⁰
14. In CAJ's view the above limitations, and the extension of CMPs, strengthen the case for the UK to accept the right of individual petition to the Committee, discussed in the List of Issues (para 42).

The Committee may wish to further press the UK on how it can ensure it is compliant with its duties under Articles 12-14 of the Convention in the context of the ever increasing 'national security' limitations on powers of competent investigatory and oversight bodies.

²⁰ This arrangement was set up under a renewable legal direction at the time of the devolution of powers. Officials put on record that the rationale for making prison service staff dealing with 'national security' information about 'separated' paramilitary or other prisoners temporarily answerable to the NIO and not the devolved service was to give MI5 'confidence' that prison service staff could handle such information. (See Hansard, Committee of Justice, Northern Ireland Assembly, 'Prison Service: Secretary of State's Directions on National Security Functions' 14 June 2012; functions are set out in Northern Ireland (Devolution of Policing and Justice Functions) Order 2010 (Schedules 4,5,&8); the Secretary of State's 'direction' is provided under s1A(7) of the Prisons Act (Northern Ireland) 1953.

Dealing with the legacy of the Northern Ireland conflict (Articles 12-14)

15. The Committee's List of Issues asks the UK to address concerns about "about the investigations into deaths by lethal force that occurred during the conflict period in Northern Ireland" (para 20).
16. CAJ remains concerned there are limitations on criminal justice mechanisms with a remit to deal with unsolved cases relating to the past conflict in Northern Ireland.²¹ Such limitations curtail the ability of competent bodies to provide prompt and impartial investigations into allegations of human rights violations, including into matters protected against under the Convention. Torture and ill-treatment were recurring aspects of the conflict, including allegations of ill-treatment during internment and persistently during police custody. A significant number of people were also maimed or otherwise injured during the conflict and still suffer the consequences of those injuries.
17. CAJ is aware in certain circumstances the absence of an effective and independent investigation into a death at the hands of the state has been held to be a violation of the rights of family members under Article 3 of the European Convention on Human Rights (ECHR) and hence regards these matters as relevant to the duties under Articles 12-14.²² There are still significant delays, deficiencies and obstruction of the implementation of European Court of Human Rights judgments in the right to life cases relating to the conflict (known as the *McKerr* group of cases or Cases concerning the action of the security forces in Northern Ireland).²³
18. At present the main mechanisms capable of conducting police investigations in to matters relating to the past conflict are the Police Ombudsman's Office and Police Service of Northern Ireland Historical Enquiries Team (HET). The Ombudsman's office is an independent body

²¹ The Belfast/Good Friday Agreement in 1998 following protracted armed conflict in Northern Ireland beginning in the late 1960s which, in a relatively small geographical entity, left over 3600 people dead and many thousands more persons injured.

²² In the *Case of ER and Others v. Turkey* the ECtHR held there was an ongoing violation of ECHR Article 3 for family members who sought to learn what happened to their relative after being detained and subsequently disappeared by the Turkish authorities. In this case, the Court found that the applicants 'suffered, and continue to suffer, distress and anguish as a result of the disappearance of their relative and their inability to find out what happened to him. The manner in which their complaints were dealt with by the authorities must be considered to constitute inhuman treatment contrary to Article 3 of the ECHR (see *Taniş and Others...* §§ 218-221).²² The Court concluded that there had 'been a violation of Article 3 of the Convention in respect of the applicants' (§97). CAJ also notes the ECtHR commentary on the 'right to truth' in *El Masri v The former Yugoslav Republic of Macedonia*²² and which criticised "the concept of "State Secrets" used to obstruct the search for the truth'.

²³ *McKerr v the United Kingdom*, judgment of 4 May 2001, final on 4 August 2001.

and can investigate alleged misconduct or criminality by the police, although the legislation does provide some restrictions on this role. The HET is restricted to investigating unresolved conflict related deaths and not other potential human rights violations relevant to the Convention. Whilst the HET can investigate state actors including the armed forces, CAJ has had concerns in relation to the independence and effectiveness of these investigations.²⁴ There has been specific criticism, leading to an independent official review, of the way the HET has handled the reinvestigation of cases into British Army killings.²⁵ There is also no independent mechanism to review past prosecutorial decisions (e.g. decisions not to prosecute members of the security forces for alleged human rights abuses).

19. CAJ has become increasingly concerned at the effectiveness of the inquest system, as it is functioning at present, to provide effective investigations in compliance with ECHR Article 2 in historic cases. There is currently a backlog of these inquests within the coronial system. It seems that at present there are currently 52 historic inquests still pending. The inquest into the death of Pearse Jordan together with another recent 'legacy inquest' (into the deaths of Martin McCaughey & Dessie Grew 22 years ago) which addressed the use of lethal force by state actors, has identified some serious deficiencies of our coronial system when dealing with these types of inquests.²⁶ These limitations in our view (cumulatively) prevent this mechanism meeting the requirements of ECHR Article 2. Key issues include:

²⁴ For further details see 'Submission to the Committee of Ministers from the Committee on the Administration of Justice (CAJ) & the Pat Finucane Centre (PFC) in relation to the supervision of Cases concerning the action of the security forces in Northern Ireland.' February 2012 (available at <http://www.caj.org.uk/contents/1074>).

²⁵ The original discharge of weapons by the British Army which resulted in deaths were originally dealt with, not by the main police service – the Royal Ulster Constabulary (RUC), but by the Royal Military Police (RMP). This occurred under an agreement whereby cases involving army personnel suspected of involvement in unlawful killings of civilians were interviewed by the latter and not the former, even where other witnesses' statements were at variance with the accounts given by the soldiers. A domestic Court noted in 2003 that the 'RMP' process did not meet the requirements of ECHR Article 2 (Application by Mary Louise Thompson for Judicial Review [2003] NIQB 80) Academic research into HET's processes and procedures for dealing in RMP cases found apparent anomalies and inconsistencies in the investigation process where the military is involved as compared to historic cases where non-state or paramilitary suspects are involved (Lundy, Patricia (2012) Research Brief: Assessment of the Historical Enquiries Team (HET) Review Processes and Procedures in Royal Military Police (RMP) Investigation Cases. 12 pp. Available at: <http://eprints.ulster.ac.uk/21809/>) As a result of this, in late 2012 a decision was made by the Northern Ireland Policing Board for the HM Inspector of Constabulary (HMIC) to conduct an independent review of the HET's investigative practices in relation to the RMP cases. The outcome of this review is pending.

²⁶ For an appraisal outlining concerns in relation to the Jordan Inquest see Investigative journalist report at <http://www.thedetail.tv/issues/140/pearse-jordan-verdict/hung-jury-in-jordan-case-raises-new-questions-about-juries-in-troubles-killing-inquests>

- the process of appointing a jury is anonymous and therefore there is inadequate provision for vetting jurors who may have a conflict of interest or potential bias;²⁷
- an inquest jury in Northern Ireland, *unlike elsewhere in the UK*, needs to reach a unanimous decision;
- inquests in Northern Ireland cannot issue verdicts of lawful or unlawful killing, which falls short of international standards;
- there are protracted delays and litigation involving the Police (PSNI) and armed forces ministry (MOD) in relation to disclosure to next-of-kin, of material that is submitted to be relevant, such as details of witnesses' involvement in other lethal force incidents which falls within the broader circumstances of the death;
- there are concerns about failures to secure attendance of security force personnel at the hearing; and
- inquests continue to be subject to excessive delays.

The Committee may wish to question the UK on how it intends to insure the above mechanisms can be reformed to provide remedy in line with Articles 12-14 of the Convention.

²⁷ <http://www.legislation.gov.uk/ukpga/2007/6/section/10>
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Prison Reform in Northern Ireland (Article 16)

The Prison System

20. Further to the Committee's comments regarding prisons in its List of Issues (para 34) it is important to note that the Northern Ireland Prison Service (NIPS) is presently undergoing significant reform. This follows an overarching independent review of prisons in Northern Ireland which published its final report in October 2011 (the Owers Report).
21. There are a number of issues, which CAJ would like to bring to the attention of the Committee, including those which relate specifically to Maghaberry prison, which has a complex and diverse male population, including life sentence, remand, and 'separated (paramilitary) prisoners. A recent inspection of the prison by the Criminal Justice Inspection (CJI) highlights the lack of adherence to the duty of care and significant gaps in care for vulnerable prisoners. Contrary to the UK Periodic report (para 549²⁸), the inspection report states 'few reviews [of prisoners at risk] were multi-disciplinary'.²⁹ The same reports notes a significant number of prisoners have reported feeling unsafe within the prison and the inspection report states that there is 'no effective monitoring of violent incidents to identify when or where they are likely to occur or how they could be prevented'.³⁰ CJI found there continues to be the persistent 'unequal outcomes'³¹ for Catholic prisoners who the aforementioned prison review found were 'disproportionately represented in matters relating to prison discipline – adjudication, use of force and segregation'.³² Given the history of conflict in Northern Ireland it is vital that this sensitive issue is better monitored and is effectively addressed.
22. Other concerns regarding the prison system prevail. Overcrowding has long been reported as a significant problem in Northern Ireland prisons and remains a problem; CAJ does not suggest making the prison bigger, but rather addressing related issues, notably, the perceived overuse by the judiciary of remand for suspects and short sentences for fine defaulters.

²⁸ "The NIPS introduced the Supporting Prisoners At Risk (SPAR) procedures in December 2009. This process adopts a multi-disciplinary approach to the issues identified in each individual case... Individual cases are considered at regular case conferences, where care plans are reviewed and amended as required, in a process that involves the prisoner as well as prison staff, nurses, other professionals working in the prison, and where deemed necessary, the prisoners family."

²⁹ Criminal Justice Inspection. *Report on an unannounced inspection of Maghaberry Prison 19-23 March 2012*, December 2012, para 1.54. <http://www.cjini.org/CJINI/files/b5/b561aa96-c6b8-417f-9c70-a736713315e8.pdf>

³⁰ *Ibid*, p. v; see also para 1.34.

³¹ *Ibid*, p. vi.

³² Prison Review Team, *Review of the Northern Ireland Prison Service – Conditions, Management and Oversight of all prisons, Final Report October 2011 (The Owers report)*, p.38.

Youth Justice

23. In relation to the youth justice system in Northern Ireland, the 5th UK Periodic Report (para. 575) refers to the Youth Justice Review. As a result of local political agreement, the Review was intended to examine how children and young people are processed at all stages of the criminal justice system, including detention, to ensure compliance with international obligations and best practice.³³ There is concern however that the Review falls far short of what was envisaged in terms of compliance with international obligations and best practice and will not therefore address the ongoing breaches of the rights of children who come into contact with the criminal justice system.
24. In Northern Ireland the minimum age of criminal responsibility (MACR) remains 10 years of age. The Committee on the Rights of the Child in 2002 stated that the age at which children enter the criminal justice system in the UK was low and made a clear recommendation that the UK government considerably raise the age of criminal responsibility.³⁴ The Youth Justice Review has recommended that the minimum age of criminal responsibility be raised to 12 with immediate effect and following a period of review of no more than three years, that consideration should be given to raising the age to 14. However, due to this being an extremely contentious political issue in Northern Ireland, little progress has been made in implementing this recommendation.
25. Since November 2012, in all but the most ‘exceptional circumstances’ 15-17 year olds, are no longer to be detained at Hydebank Woods Young Offenders Centre but rather are to be sent to the Juvenile Justice Centre. These ‘exceptional circumstances’ are yet to be clearly defined. The insertion of ‘exceptional circumstance’ in the proposed legislation the Justice (Northern Ireland) Bill 2013 is contrary to the UN Convention on the Rights of the Child, which provides at Article 37(c) that every child deprived of their liberty shall be separated from adults in all places of detention, unless it is considered not in their best interests to do so. The Committee on the Rights of the Child recommended to the UK in 2008 that it should ensure that unless it was the child’s best interests, every child deprived of liberty should be separated from adults in all places of deprivation of liberty.³⁵ The Youth Justice Review as well as the Prison Review have both recommended the removal of all under 18’s from Hydebank Wood Young Offenders Centre, where children were detained with adults. None of these reports recommended the continued detention of children in Hydebank Wood in ‘exceptional circumstances’.

³³ Agreement reached at Hillsborough Castle, 5th February 2010.

³⁴ United Nations Committee on the Rights of the Child, Concluding Observations United Kingdom, CRC/C/15/Add.188, 9th October 2002, paras. 59 and 62.

³⁵ *Ibid*, para. 78(d).

26. The UK Periodic Report also suggests that custody is now only used for the most serious and persistent young offenders and that limitations have been placed in Northern Ireland on the use of custodial remands for children (para. 572). However legislation in Northern Ireland still allows the PSNI to refuse bail to a child on the basis that they ought to be detained in their own interests.³⁶ It has been suggested that these powers are used in relation to some children not as a last resort but in the absence of alternative accommodation.³⁷ These cases represent a consistently high proportion of admissions to the Juvenile Justice Centre. In 2010/11 admissions of this kind accounted for 62% of initial admissions to Woodlands Juvenile Justice Centre compared to 47% in 2006/07.³⁸ It has been reported that whilst the percentage of admissions of this kind has increased steadily only 45% of these admissions between April 2010 and March 2011 were then refused bail by the courts and only 9% of children detained this way ultimately received custodial sentences.³⁹

Women Prisoners

27. The Committees List of Issues asked for further information regarding improvements for women prisons (para 33). There have been concerns and discussion concerning the conditions of women prisoners for many years in Northern Ireland, and although the government appear to finally be making progress in the scheme of overall prison reform, there are a number of continued issues. A purpose-built custodial facility has been discussed for years yet Northern Ireland still has no such facility for women.

The Committee should consider encouraging the UK to:

- a) fulfil its commitments to holistically reform the prison system in Northern Ireland ;**
- b) keep all children out of Hydebank Wood Young Offenders Centre;**
- c) create a purpose-built women's prison for those women for whom alternatives to custody are not suitable.**

³⁶ Article 39, Police and Criminal Evidence (Northern Ireland) Order 1989.

³⁷ 'An announced inspection of Woodlands Juvenile Justice Centre', Criminal Justice Inspection Northern Ireland, November 2011, p. 4.

³⁸ 'Report of the Review of the Youth Justice System in Northern Ireland' September 2011, p. 53.

³⁹ *Op cit* 10, p. 4.

Bill of Rights for Northern Ireland (Article 2)

28. The Committee's List of Issues (para 3) seeks further information on the development of a Bill of Rights for Northern Ireland. It is important to reiterate that the Northern Ireland Bill of Rights was committed to in an international treaty (UK-Ireland Belfast/Good Friday Agreement)⁴⁰ which resulted from the Northern Ireland peace process and is a separate and distinct process from any potential British or UK Bill of Rights. In addition to the Agreement being endorsed by referendum in both Northern Ireland and the Republic of Ireland, public opinion polls have consistently demonstrated high levels of support for a Bill of Rights in Northern Ireland in Protestant and Catholic communities and beyond.⁴¹
29. The UK Periodic Report (para 754) expresses willingness to engage with the Northern Ireland Executive, political parties in Northern Ireland and others to resolve the issue of a Bill of Rights for Northern Ireland. It is clear that differences exist between political parties in Northern Ireland as to the content of a Bill of Rights and how the process should be taken forward. The UK's Response to the List of Issues (para 3.1) which suggests that political consensus is required from the Northern Ireland Assembly on a Bill of Rights for Northern Ireland. However, such an approach would be incompatible with the Belfast/Good Friday Agreement which contains no such precondition.
30. The UK Periodic Report (para 755) refers to establishment of a Commission to investigate the creation of a British Bill of Rights that incorporates and builds on obligations under the ECHR. This Commission was set up in March 2011 to investigate the creation of a 'UK Bill of Rights' and delivered its final report (in two volumes) 'A UK Bill of Rights: The Choice Before Us' to the UK Government on December 2012. This stated:
- We are acutely conscious of the sensitivities attached to discussion of a UK Bill of Rights in the context of Northern Ireland. In particular we recognize the *distinctive* Northern Ireland Bill of Rights process *and its*

⁴⁰Treaty Series No. 50 (2000) Cm 4705; the Agreement consisted of the British-Irish Agreement between the two sovereign states and the Multi-Party Agreement between participant political parties. The British-Irish Agreement (Article 2) affirms the solemn commitment of the UK government to support and implement the sections of the Multi-Party Agreement, which correspond to it.

⁴¹ A Market Research Northern Ireland opinion survey published by the Northern Ireland Human Rights Commission in 2004 found that a large majority of respondents (87 per cent) would support a proposed Bill of Rights. Both, Protestants (87 per cent) and Catholics (85 per cent) were in agreement with the concept of having a Bill of Rights that reflects the particular circumstances of Northern Ireland (Progressing a Bill of Rights for Northern Ireland: An Update, Belfast: 2004); in July 2011 a poll of 1000 persons conducted by Ipsos MORI found 80%+ of respondents thought a Bill of Rights for Northern Ireland was important among supporters of all the main political parties (SF 88%, SDLP 86%, DUP 84%, UUP 83%, Alliance 81%) (in Human Rights Consortium 'Bill of Rights for Northern Ireland, Overdue' Belfast, 2011, page 3).

importance to the peace process in Northern Ireland. We do not wish to interfere with that process in any way nor for any of the conclusions that we reach to be interpreted or used in such a way as to interfere in, or delay, the Northern Ireland Bill of Rights process' (emphasis added).⁴²

31. Recent unrest (see below) in Northern Ireland has highlighted unresolved issues of the conflict which were to be dealt with under a Bill of Rights. CAJ is concerned about what is happening now in Northern Ireland and believes it would be erroneous for the UK government to await the next crisis in the peace/political process to discharge its commitments to take forward a Bill of Rights as provided for in the 1998 Agreement.

The Committee may wish to call on the UK to fulfil its treaty based commitment to a Bill of Rights for Northern Ireland, inclusive of matters protected by the Convention.

Use of Force by Police (Article 16)

32. The Committee's List of Issues (para 36) raised concerns about the use of force by police, notably when policing protests. Although the concern was raised specifically about police in Britain, there is significant relevance for Northern Ireland in light of the recent unrest related to a decision restricting the days the UK Union flag can be flown over Belfast City Hall, with potential implications for the upcoming summer 'Marching Season'.⁴³

Plastic Bullets (AEP's – Attenuated Energy Projectile)⁴⁴

33. One of the long-term concerns CAJ has in relation to the policing of protests and public order situations relates to the use of plastic bullets. In the past CAJ has pointed to plastic bullets being used disproportionately against the Catholic community.⁴⁵ While the last year has seen a considerable drop in the use of plastic bullets CAJ is concerned that with the recent protests, upcoming summer parades and G8 summit which will

⁴² <http://www.justice.gov.uk/downloads/about/cbr/uk-bill-rights-vol-1.pdf>, para 75.

⁴³ Each year several thousands of parades happen in Northern Ireland, the majority by Protestant Loyal Orders (Loyal refers to loyalty to the British Crown). Most parades occur in the late spring and summer months and there has been significant public disorder related to some parades and counter protests against them. This time of year is frequently referred to as 'marching season'.

⁴⁴ AEP means Attenuated Energy Projectile. Rubber bullets were used in Northern Ireland until 1975 when they replaced by plastic bullets, and the replaced again by another form of plastic bullet called AEP's in 2005. Despite the fact that all of these types of bullets were, and continue to be, mooted as non-lethal weapons they have in fact killed 17 people in Northern Ireland, mostly young people and adolescents.

⁴⁵ The CAJ 'Misrule of Law' report into the policing of the events surrounding the 1996 Loyal Order parade in Drumcree, Portadown, County Armagh contrasted the 5,340 plastic bullets fired at mainly Catholic/nationalist protestors over three days of serious public disorder, with the 662 fired in three previous days of similar Protestant/ unionist disorder.

be held in County Fermanagh in June 2013 plastic bullets will be used, potentially in increased numbers.⁴⁶

34. Plastic bullets can be a lethal weapon and CAJ believes are inappropriate in public order situations and, indeed, one which has to date never been used in such circumstances in Great Britain. The Committee recommended as far back as 1998 ‘the abolition of the use of plastic bullet rounds as a means of riot control’.⁴⁷ More recently similar concerns were raised by the United Nations Human Rights Committee in the 2008.⁴⁸ In 2002 the Committee on the Rights of the Child expressed concern at the continued use of plastic bullets (baton rounds) as a means of riot control in Northern Ireland, on the basis that they cause injuries to children and may jeopardize their lives. The Committee urged that the use of plastic baton rounds as a means of riot control be abolished.⁴⁹ In 2008 the Committee on the Rights of the Child welcomed the abolition of the use of plastic baton rounds, but expressed concern at their replacement with AEPs, whose less harmful nature has not been proved. The Committee recommended to the Government that it put an end to the use of all harmful devices on children.⁵⁰ Despite these clear recommendations it is an ongoing concern that the PSNI continue to use AEPs, including in public order situations, when children and young people are present.

Tasers

35. In relation to the use of Tasers (paras. 314 – 317), the State Party has suggested that the Taser is a ‘less-lethal’ alternative to conventional firearms. Given the number of fatalities attributed to the use of Tasers elsewhere,⁵¹ concerns have been raised about the ‘less-lethal’ nature of the Taser and the justification for a test for its deployment which is below the threshold for the use of conventional firearms including plastic bullets. Tasers achieve compliance through the use of pain, rather than pain being

⁴⁶ Recurrent parades-related July 12th unrest in the Ardoyne area of north Belfast (2010, 2011 and 2012) has seen continued deployment of plastic bullets. In July 2010, 70 baton rounds were discharged, in July 2011 during unrest police fired up to 100 baton rounds. In June 2011 trouble in the nationalist Short Strand (a Catholic/Protestant interface area in East Belfast) area resulted in 66 rounds being fired. However, on July 12th and 13th 2012 during unrest in Ardoyne there was a considerable reduction in use of AEP’s with six baton rounds discharged. More recently during the Union Flag protests and subsequent disorder plastic bullets were also discharged six times.

⁴⁷ CAT/C/44/Add.1 paragraph 76(g).

⁴⁸ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/433/42/PDF/G0843342.pdf?OpenElement>

⁴⁹ United Nations Committee on the Rights of the Child, Concluding Observations United Kingdom, CRC/C/15/Add.188, 9th October 2002, paras. 27 – 28.

⁵⁰ United Nations Committee on the Rights of the Child, Concluding Observations United Kingdom, CRC/C/GBR/CO/4, 20th October 2008, para. 30 - 31.

⁵¹ According to Amnesty International the number of people who died following police use of Tasers in the USA between 2001 and 2012 is at least 500

<http://www.amnestyusa.org/news/press-releases/amnesty-international-urges-stricter-limits-on-police-taser-use-as-us-death-toll-reaches-500>

a side effect of their use. While the use of force will inevitably inflict a degree of pain on its victims, with Tasers the infliction of pain is the means of incapacitating the person. The UK also suggests that it has undertaken rigorous and unprecedented testing of Tasers and submitted these devices for independent medical assessment. There is concern however that independent medical evidence as to the impact of Tasers on children and young people, particularly children and young people with a disability or mental health condition, does not exist. Tasers have been drawn, aimed, red-dotted and discharged against children and young people in Northern Ireland since their introduction in 2008.⁵² The Committee on the Rights of the Child in 2008 expressed concern at the authorisation of the use of Tasers against children and recommended to the Government that it put an end to the use of all harmful devices on children.⁵³

Use of Dogs

36. There have been allegations of heavy-handedness during Union flag protests, including disproportionate use of dogs. CAJ is concerned about the complaints made in relation to disproportionate use of dogs and have seen disturbing video footage in this regard, where dogs are on long leashes and thus in our view, beyond the effective control of the responsible officer.

The Committee may wish to reiterate its previous concerns regarding plastic bullets, and seek further information from the UK in relation to Tasers and the use of dogs in public order situations.

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⁵² Figures obtained by the Children's Law Centre (CLC), an NGO based in Belfast, indicate that between 1st April 2008 and 30th September 2010 a Taser was discharged against one child under the age of 18 and 'drawn and aimed' at seven under 18 year olds (Figures obtained by CLC from the Police Ombudsman for Northern Ireland, 14th March 2011). According to figures recorded by the Police Ombudsman for Northern Ireland, between the introduction of Tasers in 2008 and the end of September 2011, a Taser has been discharged against one child under the age of 18 ('Analysis of incidents involving the discharge of Tasers by the PSNI, 25th January 2008 – 30th September 2011' Office of the Police Ombudsman for Northern Ireland, January 2012, p. 23.) Further information obtained from the Police Service of Northern Ireland indicates that between October 2011 and September 2012, a Taser was discharged on seven occasions, and all occasions was discharged against an adult. However a Taser was red-dotted on one occasion against a child (Figures obtained by CLC from the Police Service of Northern Ireland, 6th February 2013).

⁵³ United Nations Committee on the Rights of the Child, Concluding Observations United Kingdom, CRC/C/GBR/CO/4, 20th October 2008, para. 30 - 31.